



The New Dynamics of Mass Incarceration

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From The Director

The turn of the century marked a new direction for the nation's prisons and jails: after three decades of continuous growth, the U.S. incarceration rate leveled off. The years since have been widely recognized as an era of reform, heralding the end of mass incarceration.

The reality is more complex.

This report shows that while the dynamic of unified growth—in prisons and jails, across all counties and states—is indeed a thing of the past, the new millennium marked the fragmentation of that one dynamic into several incarceration trends. As a result, the convention of using the state prison population as the measure of success can mislead observers into viewing the “era of reform” in too rosy a light. It is not a proxy for the multiplicity of trends at play, and obscures enormous variation within states and across the country.

At a glance, prison populations have declined in half of the states. Coupled with headlines that the U.S. incarceration rate continues to fall, this trend has given rise to claims of early victories. But when one digs deeper, exploring the complex relationship between local jails and state prisons, it becomes clear that true reform has been more elusive.

In some counties, reductions to prison populations are offset by increases in the jail population. Elsewhere, more people are sent to prison while fewer are sent to jail. The biggest surprise of all may be that progress toward decarceration has actually eluded many states where success has long seemed apparent—only the largest cities are sending fewer to prison and jail, while smaller cities and towns continue on a path of more and more incarceration.

These insights were made possible through the Vera Institute of Justice's work weaving together over

40 years' worth of prison and jail data in order to produce tools and knowledge to help drive change for communities across America.

The aim of this report is not to throw cold water on reform, but rather to add fuel to the fire. Ultimately, the United States cannot unwind mass incarceration if reformers remain fixated on state-level trends and solutions. The numbers show that ending mass incarceration requires reform everywhere: in states and in counties, in prisons and in jails.

But the legacy of mass incarceration is not one of only datasets and policy. The damage wrought by its decades-long rise cannot be measured solely in prison and jail statistics. As incarceration ballooned, there was a concurrent shift toward more punitive conditions of confinement, as policymakers and courts prioritized measures meant to ensure institutional safety over the dignity and rights of incarcerated people. These harms rippled past prison walls into the families and communities left behind, and in collateral consequences that accompanied people returning from prison or jail. Such intergenerational impact is hard to quantify, and harder still to undo.

Reducing the number of people behind bars is only the first of many steps to counter the systemic harm of mass incarceration. But it is an important step. We hope the insights in this report—and the data available at trends.vera.org—will help policymakers and the public drive change everywhere.



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About this report

This report is one of a series that the Vera Institute of Justice (Vera) is releasing with the Safety and Justice Challenge—the John D. and Catherine T. MacArthur Foundation’s initiative to reduce overincarceration by changing the way America thinks about and uses jails. The initiative is supporting a network of competitively selected local jurisdictions committed to finding ways to safely reduce jail incarceration. Other publications in the series to date include:

- › *Incarceration’s Front Door: The Misuse of Jails in America*;
- › *The Price of Jails: Measuring the Taxpayer Cost of Local Incarceration*;
- › *Overlooked: Women and Jails in an Era of Reform*;
- › *Out of Sight: The Growth of Jails in Rural America*;
- › *Divided Justice: Trends in Black and White Incarceration 1990-2013*; and
- › the multimedia storytelling project, *The Human Toll of Jail*.

Through the Safety and Justice Challenge, our own office in New Orleans, and direct partnerships with jurisdictions nationwide, Vera is providing expert information and technical assistance to support local efforts to stem the flow of people into jail, including using alternatives to arrest and prosecution for minor offenses, recalibrating the use of bail, and addressing fines and fees that also trap people in jail. For more information about Vera’s work to reduce the use of jails, contact Nancy Fishman, project director at Vera’s Center on Sentencing and Corrections, at nfishman@vera.org. For more information about the Safety and Justice Challenge, visit www.safetyandjusticechallenge.org.

Introduction

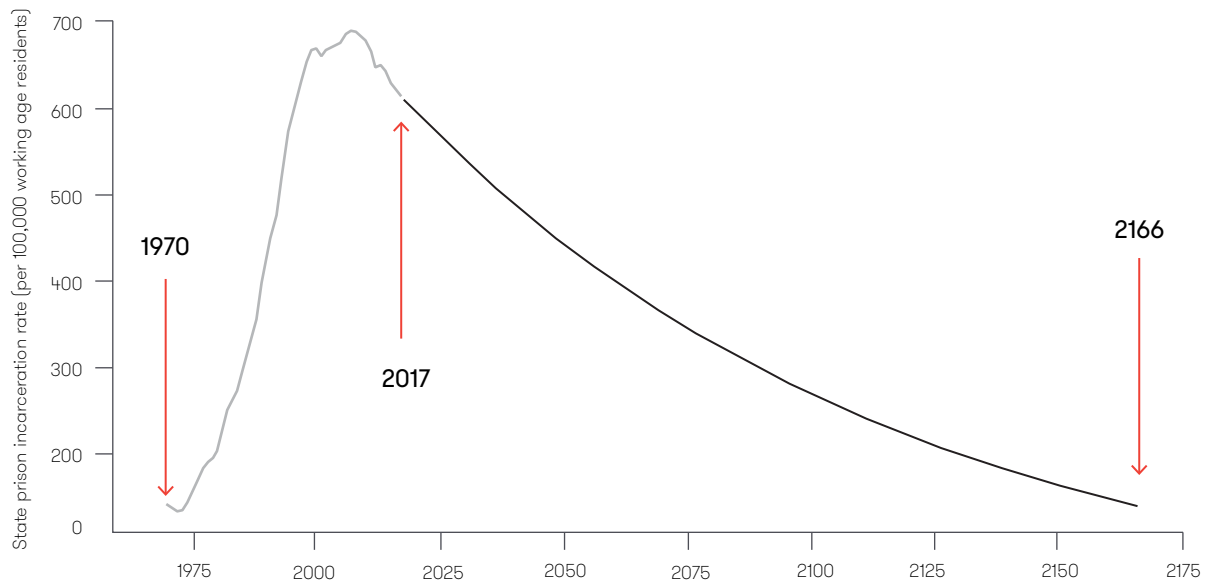
After decades of continuous growth, the United States' prison population began to plateau in the new millennium as the nation entered an era of criminal justice reform aimed at lowering the footprint of incarceration. This seemed to herald the beginning of the end for mass incarceration. Since 2007, when the country hit a peak of nearly 800 people in prison per 100,000 working age adults—over 1.6 million people total—overall prison incarceration has declined by about 1 percent on average each year. The new downward trajectory of incarceration in the United States has paralleled a reckoning with the mounting costs of confinement and a growing awareness that incarceration in America was—in the words of a 2014 National Research Council report—“historically unprecedented and internationally unique,” and did not have the promised impact on public safety. (See “A brief history of mass incarceration: From unified growth to an era of reform” at page 8.)

Legislative and policy reforms have not brought a swift reversal of mass incarceration, however. Even prison population trends—long used as convenient barometer of criminal justice reform's progress—show that unwinding the nation's overreliance on incarceration will be a long-term endeavor. At the current pace, it will be 149 years until U.S. prison incarceration rates are as low as they were in 1970. (See Figure 1 at page 6.)

Figure 1

How many years until incarceration in the United States falls to 1970 rates?

■ Measured ■ Extrapolated



Note: This projection is based on the average annual rate of decline in the state prison incarceration rate since its peak in 2007.

At the same time, while aggregated national prison population data indicates slow decline, it cannot be the sole indicator used to measure the progress made in the nation's recent efforts to reduce incarceration. Prison populations are slow to change after the implementation of most policy or practice changes, and thus provide an inadequate metric by which to measure and adjust the immediate impact of reforms—or regressive legislation. Furthermore, a reliance on aggregate prison data fails to acknowledge or measure the tremendous variation in incarceration trends from state to state and within states, and ignores a significant locus of incarceration: local jails—county- or municipally-run facilities that primarily hold people arrested but not yet convicted of a crime. For example, while much of the country is locking fewer people in jails and prisons, Kentucky is doing the opposite. If jails and prisons continue to grow in Kentucky as they have since 2000, everyone in the state will be incarcerated in 113 years. A comprehensive look at disparately reported metrics for the nation's 50 state prison systems and 2,872 local jail jurisdictions is necessary to more accurately account for the headway made thus far in reversing mass incarceration.¹

To accomplish this goal, this report proposes a wider set of metrics by which to analyze incarceration trends to supplement the old standard of state prison population: 1) prison admissions; 2) jail admissions, 3)

pretrial jail populations and 4) sentenced jail populations. When considered together, this combination of metrics better captures the complexity of contemporary incarceration trends at the state and local level, makes the patterns that underlie national statistics discernable, and provides a starting point for deeper investigation into the particular context of individual counties' justice systems. To aggregate and analyze these metrics, Vera researchers merged two federally collected prison datasets—the National Corrections Reporting Program and the National Prisoner Statistics Program—with the jail data in Vera's *Incarceration Trends* data tool, sourced from the federal Annual Survey of Jails and Census of Jails. In addition, Vera researchers collected data on incarceration directly from states.

As this report will discuss, studying all the moving parts of the incarceration system reveals a more messy truth: that there is no single way to characterize the current state of mass incarceration. A single trend of unified growth across states and counties, and in both prison and jail incarceration, characterized mass incarceration's rise. But that has fragmented into four distinct incarceration trends, depending on how and where incarceration is measured:

- › some jurisdictions have seen meaningful overall declines in both prison and jail incarceration;
- › others have seen stagnation at high incarceration rates;
- › still others have seen shifts between prisons and jails in place of real reductions to the footprint of incarceration; and
- › some have seen unchecked growth.

Ultimately, unwinding mass incarceration will require the particular alchemy of data-driven policy and political will, sustained by pressure from grassroots advocates and litigation. But only by acknowledging the realities in thousands of jurisdictions across the country can researchers, policymakers, and the public identify where reform is still only a promise and target attention and resources to drive change. Without understanding how local jail populations and county-level prison admissions have evolved over time, it will be difficult to have a real sense of how state and local systems are interacting, which problems to solve, or if progress is being made at all.

A brief history of mass incarceration: From unified growth to an era of reform

After decades of stability, the U.S. incarceration rate increased markedly between 1970 and 2000, growing by an average of 12 percent each year to reach a total increase of about 400 percent—and the highest rate of incarceration in the world.^a The rise of mass incarceration was not perfectly even: the incarceration rate in states like California and Georgia began growing earlier, while in states like Minnesota and Massachusetts the increase came later. Wisconsin and Pennsylvania had notably high growth rates, but ultimately no state resisted the trend. Increased reliance on incarceration became mainstream public policy. For example, policy researchers at the National Institute of Justice argued that incarceration was a cost-effective way to reduce crime.^b Most elected officials fully supported policies reflecting that approach—as well as the appropriations necessary to expand and build new prisons and jails.^c Investment in prison and jail construction and expansion was so widespread and intensive that this era is now known as the “prison boom.”^d As the boom progressed, courts and legislatures became less responsive to incarcerated people’s claims to constitutional rights of speech, association, and freedom from cruel punishments.^e Close review of ill-treatment or harm arising from overcrowding and use-of-force incidents were largely replaced with deference to wardens’ justifications of policies and practices in the

service of institutional safety and security, and the 1996 Prison Litigation Reform Act further closed the door of the courthouse as an avenue for improving conditions.^f This created a unified trend wherein every state increased the use of prisons and jails and legislatures and courts felt little pressure to address the mounting human toll of incarceration.

The new millennium marked a turning point and ushered in a high plateau in the national incarceration rate: the nationwide growth of incarceration rates slowed, even falling slightly since the peak in 2007.^g In part, this change was due to increasing fiscal pressures states felt as a result of the recession crisis of the early 2000s, but it solidified with the subsequent financial crisis of 2008.^h As leaders responded to the financial crisis with calls for austerity, the budgetary implications began to make continued incarceration growth seem untenable in many states.ⁱ This was complemented by a growing awareness that locking up huge numbers of people had, at best, a marginal benefit to and, at worst, a corrosive effect on, public safety.^j Courts began to be more responsive to mistreatment claims by from prisoners.^k But incarceration’s decline has been far less pronounced and much more uneven than its rise, with wide variation across states and counties.^l

^a For an early statement of the theory of stability, see Alfred Blumstein and Jacqueline Cohen, “A Theory of the Stability of Punishment,” *Journal of Criminal Law and Criminology* 64, no. 2 (1973), 198-207.

^b Edwin Zedlewski argues that the benefits of crime reduction through incapacitation exceed the costs of prison operations by a ratio of 17 to 1. See Edwin W. Zedlewski, *Making Confinement Decisions* (Washington, D.C.: U.S. Department of Justice, National Institute of Justice, 1987). For a critique that notes the ways in which these conclusions are flawed, see David F. Greenberg, “The Cost-Benefit Analysis of Imprisonment,” *Social Justice* 17, no. 4 (1990), 49-75.

^c For research on elected officials supporting incarceration growth, see for example Marie Gottschalk, *The Prison and the Gallows: The Politics of Mass Incarceration in America* (New York: Cambridge University Press, 2006); Jonathan Simon, *Governing through Crime: How the War on Crime Transformed American Democracy and Created a Culture of Fear* (New York: Oxford University Press, 2007); Mona Lynch, *Sunbelt Justice: Arizona and the Transformation of American Punishment* (Palo Alto: Stanford University Press, 2009); and Naomi Murakawa, *The First Civil Right: How Liberals Built Prison America* (New York: Oxford University Press, 2014).

^d Ruth Wilson Gilmore, *Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California* (Berkeley, CA: University of California Press, 2007); and John M. Eason, “Reclaiming the Prison Boom: Considering Prison Proliferation in the Era of Mass Imprisonment,” *Sociology Compass* 10, no. 4 (2016), 261-71.

^e Sora Han, *Letters of the Law* (Palo Alto, CA: Stanford University Press, 2015), 95.

^f *Turner v. Safley*, 482 U.S. 78 (1987) (setting a standard of review). For a discussion of the impact of the Prison Litigation Reform Act, see Margo Schlanger, “Inmate Litigation,” *Harvard Law Review* 116, no. 6 (2003), 1555-1706.

^g See Danielle Kaeble and Lauren Glaze, *Correctional Populations in the United States, 2015* (Washington, DC: Bureau of Justice Statistics, 2016), 2, <https://perma.cc/PBG7-MPPU>.

^h For a discussion of the scope of the state fiscal crisis in the early 2000s, see Peter Orzag, “The State Fiscal Crisis: Why It Happened and What to Do About It,” *Milken Institute Review*, Third Quarter (2003), 17-25 (finding that states faced a \$80 billion budget shortfall, 15 percent of expenditures in the 2004 fiscal year), <https://perma.cc/9V5D-8BGE>. For impacts on policy related to incarceration see Ryan S. King and Marc

Mauer, *State Sentencing and Corrections Policy in an Era of Fiscal Restraint* (Washington, DC: The Sentencing Project, 2002), <https://perma.cc/Y7L8-FXA7>; Daniel F. Wilhelm and Nicholas R. Turner, *Is the Budget Crisis Changing the Way We Look at Sentencing and Incarceration?* (New York: Vera Institute of Justice, 2002), <https://perma.cc/D28Y-87FJ>; and Jon Wool and Don Stemen, *Changing Fortunes or Changing Attitudes? Sentencing and Corrections Reforms in 2003* (New York: Vera Institute of Justice, 2004), <https://perma.cc/46AJ-8PL2>.

ⁱ Adrienne Austin, *Criminal Justice Trends: Key Legislative Changes in Sentencing Policy, 2001–2010* (New York: Vera Institute of Justice, 2010), <https://perma.cc/GB88-Y8VF>; Marie Gottschalk, “Cell Blocks & Red Ink: Mass Incarceration, the Great Recession & Penal Reform,” *Daedalus* 139, no. 3 (2010), 62-73; and Aviram Hadar, *Cheap On Crime: Recession-era Politics and the Transformation of American Punishment* (Berkeley, CA: University of California Press, 2015).

^j For a discussion on the growth of incarceration and the adverse effects of prison policies, see Michael Jacobson, *Downsizing Prisons: How to Reduce Crime and End Mass Incarceration* (New York: New York University Press, 2005), 223. Oliver Roeder and colleagues found that incarceration’s impact on crime rates diminished after 1990 and has had no crime reducing effect since 2000. See Oliver Roeder, Lauren-Brooke Eisen, and Julia Bowling, *What Caused the Crime Decline?* (New York: Brennan Center for Justice, 2015), <https://perma.cc/2RGF-DD3C>. Additionally, David Roodman concludes that “decarceration is, in the worst case encompassed by the evidence reviewed here, break even for society.” David Roodman, *The Impacts of Incarceration on Crime* (San Francisco: Open Philanthropy Project, 2017), 135, <https://perma.cc/N3VG-8NL3>. Also see Don Stemen, *The Prison Paradox: More Incarceration Will Not Make Us Safer* (New York: Vera Institute of Justice, 2017), <https://perma.cc/486N-WM5H>.

^k Margo Schlanger reviews a recent case, *Kingsley v. Hendrickson*, 135 S. Ct. 2466 (2015), and concludes that the current state of court oversight of incarceration is shifting again, back toward a closer review of conditions, in part through a closer review of the conditions for people held pretrial. See Margo Schlanger, “The Constitutional Law of Incarceration, Reconfigured,” *University of Michigan Public Law and Legal Theory Research Paper Series*, no. 535, (2017), <https://perma.cc/S6K6-FQX4>.

^l There has been no further national increase in the total incarceration rate (prison and jail) since (with an average yearly change of -1.2 percent), prompting some researchers to speculate about “a new dynamic ... as growth in state incarceration rates has slowed significantly across the nation.” See Jeremy Travis, Bruce Western, and Steve Redburn, eds., *The Growth of Incarceration in the United States: Exploring Causes and Consequences* (Washington, DC: National Academies Press, 2014), 43, <https://perma.cc/HM55-M5QX>.

Incarceration Reform: Uneven Efforts in a Fragmented System

The rise of mass incarceration was a veritable explosion, with incarceration rates that grew rapidly and almost universally. Since 2000, state and local governments have been under increasing pressure to address overcrowding in prisons and jails, and several have passed legislation aimed directly at reducing the number of incarcerated people. But such reforms have not been universally fruitful. Because the criminal justice system is an amalgamation of thousands of city, county, and state systems that operate differently—even when bound by the same laws—it is perhaps unsurprising that reform efforts have played out unevenly across jurisdictions nationwide.²

A handful of states led the way in pursuing ambitious policy changes to stem the rise of mass incarceration. Michigan, for example, overhauled its sentencing statutes and practices over a nearly 10-year span, beginning in 1998.³ This legislative reform is estimated to have reduced the number of people committed to prison between 2002 and 2004 by 1,366, and increased parole approval rates so that an average of 900 additional people were paroled each year.⁴ At the time, it was the only state to have made significant progress in repealing mandatory minimums.⁵ Comprehensive reform packages followed in other jurisdictions, lowering prison populations in states like Connecticut (2003-04) and Texas (2007).⁶ Gradually, more states adopted legislation aimed at reducing incarceration, and rhetoric from policymakers also began to shift from “tough on crime” to “smart on crime.”⁷ Since 2006, 36 states have participated in the Justice Reinvestment Initiative funded by the U.S. Department of Justice’s Bureau of Justice Assistance and the Pew Charitable Trusts, which provides technical assistance to states that aim to reduce their prison populations or curb growth.⁸ Between 2013 and 2015, 286 bills, executive orders, or ballot initiatives targeting sentencing or corrections reform were advanced across 46 states.⁹

Vital change has been made via voter-driven initiatives as well. Voters in California and Oklahoma passed ballot initiatives in 2014 and 2016 respectively that reduced punishment for certain crimes by classifying them as misdemeanors rather than felonies.¹⁰ In 2014, New Jersey voters eliminated a money bail requirement for pretrial release, a precursor to the sweeping statewide bail reforms passed in 2016.¹¹

Where legislation has not been forthcoming, litigation has been the impetus for some reforms to incarceration policy.¹² In 2011, the Supreme Court ruled that overcrowding in California’s prisons constituted a violation of the Eighth Amendment and upheld an order to decrease the prison population to 137.5 percent of prison design capacity.¹³ This decision triggered the release of a large number of people in state custody, many of whom were shifted to local custody.¹⁴ The state has since legislatively reduced its prison admissions by 63 percent, albeit at the cost of crowding local jails until voters approved Proposition 47 in 2014.¹⁵ Proposition 47 reclassified some felonies as misdemeanors, further reducing incarceration and arrests, and thus relieved some of the crowding problems in jails.¹⁶

In some instances, in a single legislative session laws have been passed that are meant to reduce incarceration by focusing on one facet of the criminal justice system, while simultaneously escalating punitiveness elsewhere. For example, Tennessee’s Public Safety Act of 2016 created a system of graduated sanctions for violations of community supervision, with the aim of reducing the number of people being incarcerated

in both prisons and jails for violations of probation or parole—while simultaneously enhancing sentences for people convicted of a third drug trafficking, domestic violence, or burglary offense.¹⁷

Elsewhere, statewide measures are out of step with county-level efforts to reduce incarceration's footprint. In 2017, the Florida legislature passed HB 477, establishing new mandatory minimum sentences for the possession of fentanyl and its derivatives.¹⁸ Meanwhile, Miami-Dade County's Criminal Mental Health Project continues to serve as a national model for pre- and post-booking diversion of people with serious mental illnesses (SMI) or co-occurring SMI and substance use disorders into community-based treatment and support services.¹⁹

Even in an era of widespread reform efforts, various policies and practices may in fact work at cross purposes or not at all—making progress toward reducing incarceration elusive. In this context, assessing progress requires a close look at differences among the nation's 50 states and within each state's regions and counties. Looking more comprehensively at the metrics proposed in this report will provide a more accurate picture of the actual impacts, if any, of reforms.

The Metric Matters: What You See Is What You Solve

Historically, policymakers, researchers, and the public have largely relied on state and national prison population trends to evaluate the impact of incarceration policies, whether punitive or reformative.²⁰

There is intuitive appeal to measuring prison populations in order to understand the scope of incarceration, because the number of people in prison is an easy-to-understand metric and because prisons have more accessible data than jails and hold the majority of incarcerated people. However, the unified dynamic of growth in incarceration has been supplanted by the distinct trends outlined in this report. As such, state and national prison populations do not necessarily tell a complete story and a wider set of metrics is needed.²¹

It is impossible to measure “incarceration” using numbers that represent only prisons because people are incarcerated in jails as well.²² In fact, eight

Methodology

This report analyzes trends in several metrics of incarceration and incarceration rates at the state and local levels to reveal how they are changing now, after the rise of mass incarceration. To conduct this analysis, Vera researchers compiled a database with population data from the U.S. Census, as well as jail and prison incarceration data from the Bureau of Justice Statistics and directly from state sources. Vera researchers used the U.S. Census Bureau's decennial census as well as the American Community Survey (ACS) to source variables for community characteristics. The project used Census Bureau population estimates for individual years between 1970 and 2010, and 2016 estimates, all available from the U.S. Census Bureau.^a All jail and prison population and admissions counts and trends, except where specifically cited in this paper, were derived from these sources via the authors' own calculations.

Jails

Vera researchers combined jail population and jail admissions data from two Bureau of Justice Statistics (BJS) projects: Annual Survey of Jails (ASJ) and Census of Jails (COJ). The ASJ has been fielded 30 times between 1982 and 2016, and captures data for a sample of a few hundred jails; in 2015, the sample was approximately 800 counties, which included the 250 largest jails, and a stratified sample of the remaining counties.^b The COJ captures data for nearly all counties and has been fielded 10 times: 1970, 1972, 1978, 1983, 1988, 1993, 1999, 2005, 2006, and 2013.^c

This report includes data on jail populations and admissions by gender collected in the Death in Custody Reporting Program (DCRP) for each year from 2000 to 2013. Post-2013 DCRP data has not been publicly released as of the date of publication. In addition, Vera added BJS jail data disaggregated by convicted status to assess differences over time and between jurisdictions in the number of people held in jail pretrial versus after sentencing.^d

Prisons

Information on prison admissions and population is derived from the National Corrections Reporting Program (NCRP), which began recording data in 1983, and the National Prisoner Statistics program (NPS), which provides state-level prison data from 1926 to 2016. In some instances, Vera researchers collected county-level data on prison admissions and population directly from states for years not included in the NCRP. To supplement NPS data, Vera researchers collected year-end 2017 prison population counts from state departments of corrections.

The NPS covers the entire country, but only provides prison data at the state level. The NCRP covers fewer states (currently

about 40), but allows more detailed analysis of incarceration statistics by county of court commitment. The county of court commitment is generally where a person was convicted and committed to serve time in a state correctional facility; it is not necessarily the person's county of residence, and may not even be the county where the crime was committed, but is likely to be both. In places with multi-county court districts like Georgia, smaller counties share a single court district and district attorney with their neighbors, but the county of commitment is still the specific county where the crime took place, and each county is counted individually in NCRP data.

Incarceration rate

Vera calculates incarceration rates—the number of incarcerated people per 100,000 working age residents—using county population data from the U.S. Census Bureau. For a more accurate picture of incarceration rates, people under the age of 15 and over 64 are excluded since these groups are at very low risk of jail incarceration.^e Also, because the proportion of these groups in the general population varies greatly by county—less than 25 percent in some counties to over 40 percent in others—including them could skew rates and make comparisons between counties difficult. This method differs from most other calculations of statewide and national incarceration rates, which use either the total resident population or the population aged 18 and older but do not exclude persons over 64.

Urban-rural classification

Vera's analysis of the urban-rural continuum collapses the six categories defined by the National Center for Health Statistics (NCHS) Urban-Rural Classification Scheme for Counties to four.^f A county is labeled "urban" if it is one of the core counties of a metropolitan area with a million or more people, and "suburban" if it is within the surrounding metropolitan area. Vera collapses the remaining four categories into two by combining medium with small metropolitan areas, and micropolitan (an urban area with a population of at least 10,000 but less than 50,000) with noncore areas (all other areas not considered metropolitan or micropolitan).^g Vera considers the former "small and mid-sized metros" and the latter "rural." Rural areas are the most numerous, with more than 1,900 counties.

On making comparisons

The most common analyses of incarceration data feature historical or cross-jurisdictional comparisons. The results of these analyses, however, can be distorted by the comparability of the metric analyzed, whether the data is expressed as a rate or a count, and the time period analyzed. Readers should keep in mind the following considerations when analyzing incarceration data:

› **Rates or counts:** Using incarceration rates per 100,000 residents can be useful to account for differences in jurisdiction size or for changes over time. On the other hand, one should also consider the absolute count when a population has grown (or declined) substantially. For example, the jail population in Texas increased 6 percent from 2000–2015, but the number of state residents increased 32 percent. Based on these numbers, the jail incarceration rate is down, but the number of people in jail is still growing at a time—and in a state—where there is an emerging consensus that too many are already behind bars.

› **Held for other jails or federal authorities:** Cross-county comparisons of pretrial population data can become less reliable if one county holds a large number of individuals for other authorities, such as other counties, U.S. Immigrations and Customs Enforcement, or the U.S.

Marshals Service. These incarcerated individuals are aggregated into the general pretrial population in BJS statistics, as they are awaiting the resolution of their cases in federal immigration and criminal courts, respectively.

Incarceration Trends data tool

The Incarceration Trends data tool—available at trends.vera.org—collates and visualizes this publicly available but disparately located data about jail and prison incarceration so that it can be used to explore how each county’s use of jail and state prison compares with others over time.

^a Vera used the following files: Intercensal County Estimates by Age, Sex, Race: 1970-1979; 1980-1989 Intercensal County Estimates by Age, Sex, Race; Intercensal Estimates (1990-2000) Age by Sex by Race by Hispanic Origin; 2000-2010 Intercensal Estimates - April 1, 2000 to July 1, 2010 by age, sex, race and Hispanic origin; and vintage 2016 Population by age, sex, race, and Hispanic origin. Current post-censal and historical inter-censal population estimates are available online at <https://www.census.gov/programs-surveys/popest.html>.

^b U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics (BJS), “Data Collection: Annual Survey of Jails (ASJ),” <https://perma.cc/646N-KGH6>.

^c BJS, “Data Collection: Census of Jails,” <https://perma.cc/QC2Q-WH7S>.

^d For an example of the questionnaires used to collect this data, see BJS, “Data Collection: Mortality In Correctional Institutions (MCI) (Formerly Deaths In Custody Reporting Program (DCRP)),” <https://www.bjs.gov/index.cfm?ty=dcdetail&iid=243>.

^e It is not possible to exclude people under the age of 15 and over the age of 64 from the incarcerated count. While those over age 64 are a growing part of prison, this comprises a very small proportion of those incarcerated. For example, in 2012 there were 26,200 prisoners over the age of 64 in both state and federal custody, of 1,570,400 prisoners total, or 1.6 percent. Human Rights Watch, “Old Behind Bars: The Aging Prison Population in the United States” <https://perma.cc/Z622-GUPU>; and E. Ann Carson and Daniela Golinelli, *Prisoners in 2012: Trends in Admissions and Releases, 1991–2012* (Washington, DC: BJS, 2012), <https://perma.cc/5WAA-8YJU>.

^f See D.D. Ingram and S.J. Franco, *2013 NCHS Urban–Rural Classification Scheme for Counties* (Hyattsville, MD: U.S. Department of Health and Human Services, 2014), 2-5, <https://perma.cc/J434-9NJ4>.

^g *Ibid.* at 14 & table 2.

states hold more people in local jails than in state prisons.²³ In addition, using prison population as a barometer of overall change only works well when prison and jail populations are increasing or declining in tandem. Otherwise, using the prison population as a proxy for all incarceration data can obscure changes in other parts of the criminal justice system. For example, New York's state prison and jail populations have declined together since the 1990s, and Nebraska's jail and prison populations have climbed together since the 1970s. But in more than a dozen states, jail and prison trends do not move in the same direction and, even if they do, they may move at different paces. For instance, Oklahoma's prison population has grown only slowly since 2000, while its jail population nearly doubled in the same period.²⁴ Without looking at disaggregated prison and jail data, there is no way to tell how states are changing their use of incarceration.

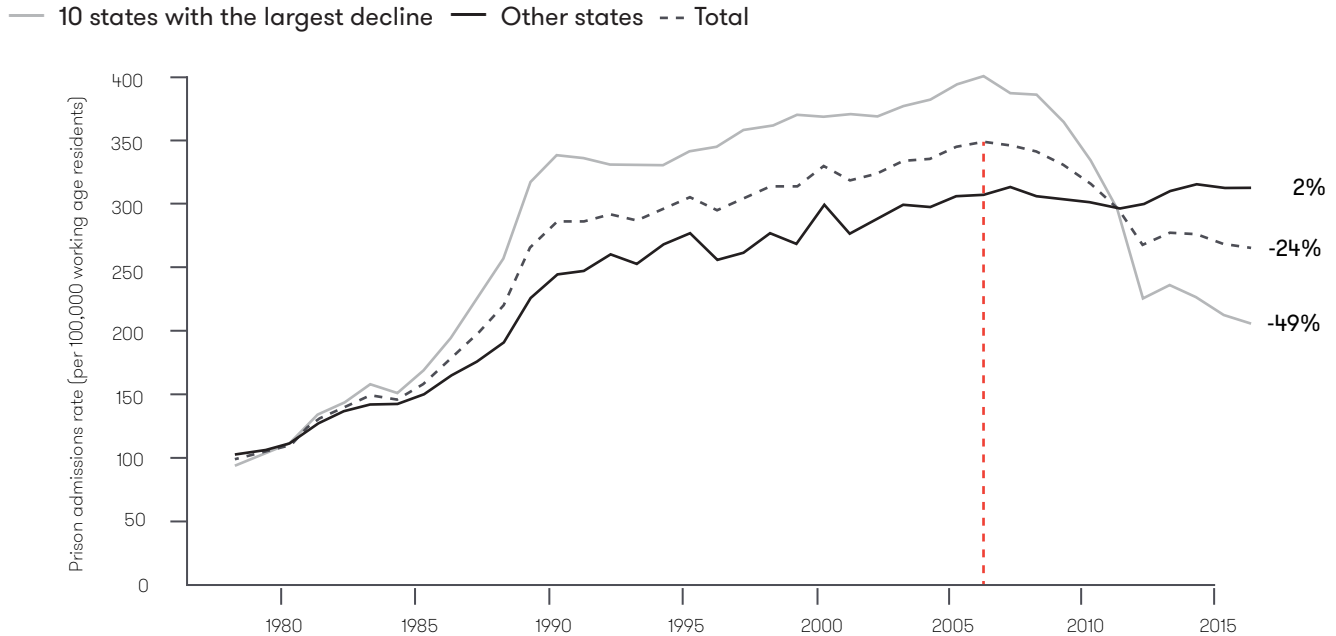
Another reason to look beyond prison populations to fully understand incarceration trends is that prison populations change slowly after a state implements any but the most drastic reforms, because most people are serving multi-year sentences. Policymakers often need data that is more responsive to changes in policy and practice in order to continuously measure and adjust reforms. For these reasons it is preferable to use the rate of prison admissions and various jail incarceration rates, rather than prison incarceration rates, to measure and report incarceration trends.

A singular focus on national prison data can be particularly problematic when assessing the state of incarceration. The overall national prison admissions rate has decreased by 24 percent since 2006. However, separating the 10 states with the largest declines (California, Connecticut, Illinois, Indiana, Mississippi, New Hampshire, New Jersey, Ohio, South Carolina, and Vermont) from the other 40 states reveals that this decrease has been driven by just a few states that have drastically reduced prison admissions—with a single state, California, accounting for 37 percent of the decline. (See Figure 2 at page 15.)

If county, rather than state, trends in prison admissions are examined, a geographic pattern in incarceration trends becomes apparent.²⁵ The most populous counties are sending fewer people to prison, driving a decline in national prison admissions, while elsewhere admissions are holding steady at historically high rates or continuing to grow. Thus, from both state and county perspectives, the national drop in prison admissions is

Figure 2

Diverging trends in prison admissions



The 24 percent drop in the national prison admissions rate since 2006 is due entirely to a 49 percent drop in 10 states.

better viewed as the average of a set of disparate trends. This observation is consistent with prior Vera research on jail incarceration, which shows a similar pattern.²⁶

To Understand Complex Changes, Multiple Metrics Are Needed

Focusing on one metric will deliver information about the way that metric is changing, but not necessarily information about how the system as a whole is changing along with it. In order to measure comprehensive change, it is vital to look beyond prison population at four additional metrics which, when combined with prison population, allow for a more nuanced and flexible understanding of how incarceration is

changing.²⁷ In order to ensure that analyses of incarceration trends are comprehensive, the following metrics should be used in conjunction with prison population (both rates and counts):

- › **Jail admissions.** The number of times people are sent to local jails annually is the best, albeit rough, estimate of how many people are directly impacted by local incarceration.
- › **Pretrial jail population.** The number of people held in jail awaiting the resolution of their charges provides a metric that is relatively easy to compare across counties and states.
- › **Sentenced jail population.** The number of people serving time in local jails helps represent the entirety of the sentenced population, particularly as states shift incarcerated populations between prisons and jails.
- › **Prison admissions.** The number of people admitted to state prison in a given year presents a timely indicator of prison usage.

For more information on each state's trends for these measures see Tables 1 and 3 in the Appendix at pages 34 and 36, or explore county- and state-level data at <http://trends.vera.org>.

Jail admissions

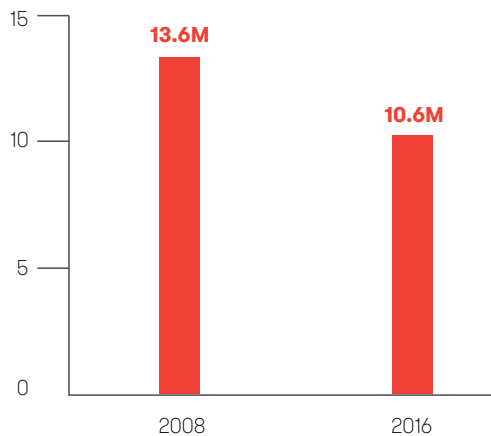
Jail admissions is the count of people sent to jail in a given year. It measures nearly every local incarceration, including people who are later released, diverted, found innocent after trial, sentenced to jail, or sentenced to prison. Studying the number of admissions to jail allows researchers to estimate the total number of people who are incarcerated in a local jurisdiction each year. It is not a perfect measure: it overcounts people who are sent to jail more than once that year, and fails to capture people who spend a full year (or longer) in jail, either awaiting resolution of their cases or serving sentences of 12 months or more.²⁸ But the vast majority of people who are incarcerated in any given year are held briefly in a local jail; the national jail admissions rate is about five times the combined jail and prison incarceration rate.

The annual jail admissions metric can be readily utilized across jurisdictions to help determine and compare the tendency of a jurisdiction to incarcerate people. Even though many people who pass through jails have relatively fleeting contact with the criminal justice system—particularly compared to those admitted to prison—such contact can still have profound consequences if one loses a job or housing, or falls behind on bills, loses custody of one’s children, or receives a conviction that carries collateral consequences.²⁹

On a national level, jail admissions have been trending down—people were sent to jail 10.6 million times in 2016, three million fewer jail admissions than 2008.³⁰ (See Figure 3, below.) Studying jail admissions can give researchers and policymakers information on where places are reducing or increasing the broad burden of incarceration.

Figure 3

Jail admissions down 3 million since 2008



Pretrial jail population

Pretrial jail population is the number of people held in jail awaiting the resolution of their charges. Pretrial incarceration is a core purpose of local jails.³¹ After people are arrested, the relevant court decides whether to hold them in jail pending resolution of the case, release them pending trial with conditions (such as bail or pretrial supervision), or release them on their own recognizance—that is, with an agreement to return for future court dates.³² In some instances, the person is released based on their agreement to comply with nonmonetary conditions (nonmonetary bail, sometimes called an unsecured bond or a release on recognizance) and in other instances a monetary security (money bail) may be demanded, which is forfeited if the person fails to appear for the trial.³³ The commercial

bail bond industry also plays a large role in who stays in jail and who is released and collects large amounts in criminal justice related debt from defendants.³⁴ In many jurisdictions, overuse or overreliance on money bail has resulted in disproportionate and lengthy pretrial incarceration of people who cannot afford to pay.³⁵

Pretrial jail population allows for a meaningful comparison of local incarceration tendencies across state lines, and can serve as a clear indicator of change in a particular state or jurisdiction. It is an important focus for understanding the causes and consequences of incarceration, and can be used to study the negative social and economic impact of contact with the justice system.

Pretrial detention also has many downstream effects. A study from Kentucky found that remaining in jail before trial increases the chances of ultimate conviction by 50 percent.³⁶ Detained individuals also received jail sentences that were three times longer—and prison sentences nearly two times longer—than people who were released during their cases.³⁷

Sentenced jail population

The sentenced jail population is the number of people serving sentences in a local jail. A portion of the sentenced jail population consists of people who were sentenced to community supervision after or instead of a period of incarceration, but who later violated the terms of their probation or parole.

Typically, jail sentences are given to people serving brief custodial sentences, usually for misdemeanor convictions, which carry relatively short periods of incarceration compared to felony convictions.³⁸ In an effort to address overcrowded and expensive prisons, several states have recently implemented reforms shortening sentences or reclassifying offenses so that people charged with these offenses are eligible for jail sentences, or mandating that people who would have previously served time in prison now serve those longer sentences in local jails (see “Smaller prisons, larger jails” at page 26). Tracking changes to sentenced jail populations and comparing them with changes in prison populations can help illuminate where states have merely shifted the site of, rather than reduced, incarceration.

Prison admissions

Prison admissions measures the number of people sent to prison each year. These admissions may occur after a trial or plea, or after a person on parole or probation violates the terms of community supervision.

The number of people sent to prison can change rapidly from year to year in response to changes in state laws or the practices of police, prosecutors, judges, or even probation and parole officers. This makes it a more responsive and useful metric than overall prison population for quickly determining how a policy, legislative, or practice change has affected prison incarceration. More than half of the sentenced population in state prisons consists of people who have been incarcerated for two-and-a-half years, and one in four people in prison has been incarcerated for more than six-and-a-half years. Therefore the rate of prison incarceration is not a timely barometer of incarceration policy in a given year, as it reflects the practices of previous years.

County-level prison admissions also reflect the operation of local criminal justice systems and provide a window into whether local officials are fully implementing state-level sentencing reforms and sending fewer people to prison, using discretion to avoid reforms, or eroding progress toward reducing incarceration with a particular set of enforcement, charging, sentencing and/or revocation choices.

Because virtually no states charge localities for prison usage, but localities do pay for jail, socio-legal scholars have warned that incentives may exist for localities to avoid county-level expenditures by preferentially delivering prison sentences.³⁹ As laws change and economic pressure grows—especially in smaller communities faced with tight budgets and dealing with the constraints of a crowded jail—there are opportunities and incentives for local actors (including prosecutors and judges) to introduce charging and sentencing policies and practices that push cases that could be charged as either misdemeanors or felonies to state prison rather than the local jail.⁴⁰ Looking at county-level prison admissions in conjunction with aforementioned jail statistics can more quickly illuminate where that might be happening, and can serve as a point of departure for deeper research or corrective action.

Prison population

Ultimately, success at reducing incarceration means a reduction in the number of people in jails and prisons. Currently, state and federal prisons hold the largest number of incarcerated people in the country, so prison

population is an important metric for the scale of incarceration. However, prison population is generally slow moving compared to other measures, as people with relatively longer prison sentences take time to clear the system.⁴¹

Moreover, estimates of prison population are delayed by between one and two years at the national and state levels, and even longer at the county level.⁴² However, it is becoming increasingly common for states to report current or recent counts of the number of people in prison. Recently, Vera harnessed such reports to produce more timely estimates of the number of people in prison.⁴³ Reporting prison population with a lag of months rather than years helps journalists, policymakers, and the public assess the current state of incarceration.

Putting it all together

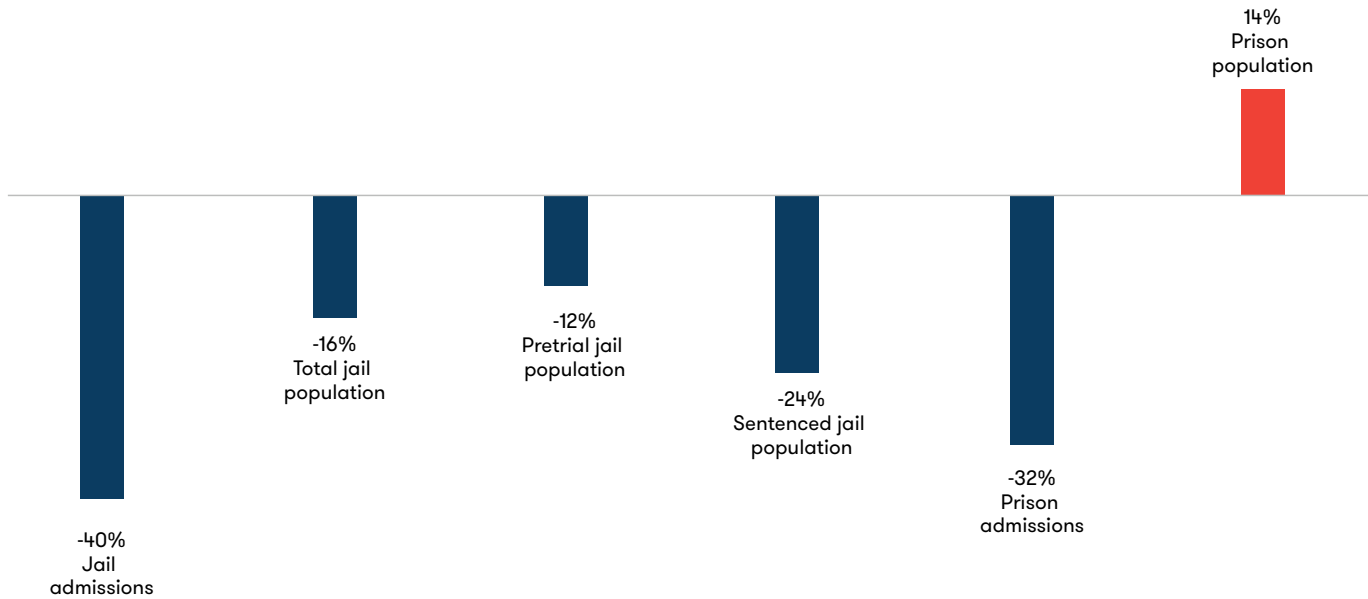
In order to demonstrate how this new multi-metric approach reflects incarceration trends in a faster and more functional way than prison population, it is instructive to look to Florida. (See Figure 4 at page 21.) Prison population seems to tell one story, but all the other metrics point in a different direction. The state's prison incarceration rate, although in slow decline as of the end of 2017, is up 14 percent overall since 2000. However, jail admissions rates are down 40 percent, pretrial detention rates are down 12 percent, sentenced jail rates are down 24 percent, and prison admissions rates are down 32 percent. In looking for the cause of Florida's high prison incarceration rate, statistics show that during this time period, the number of people serving 10 years or more in prison doubled, reaching 16.8 percent of the prison population in Florida.⁴⁴ These long sentences may obscure the other parts of the system that have adopted reforms, and may suggest one area in need of reform in order to meaningfully reduce the state's prison population.

Four Key Trends in Incarceration

Reviewing all five metrics—prison population plus the four proposed additional metrics—in relation to one another reveals important information about how incarceration is used in a county or state,

Figure 4

Diverging measures of incarceration in Florida, 2000-2015



and across counties and states that have similar characteristics beneath divergent appearances. The unified, rapid growth in jail and prison use that defined the rise of mass incarceration extended to urban, suburban, and rural areas in all 50 states. But in an era driven by efforts toward reform, there are now three other key trends in addition to growth: decarceration, jurisdictional shifts, and stagnation. These trends can only be seen by drilling down and taking a coordinated look at the available data using the metrics proposed above.

Decarceration: Cities lead the way

Thirty-four states have reduced their total (prison and jail) incarceration rates since the national peak in 2007, suggesting that reforms designed to reduce overall incarceration have been successful. However, this broad statistic is largely driven by recent trends in large cities and their suburbs, rather than signaling a uniform statewide movement toward decarceration. A more granular look at the data reveals the truth about this dynamic, and can help shape the development and implementation of future reforms.

The state of New York, for example, has made substantial progress toward decarceration since the mid-1990s: prison populations dropped 31 percent between 1999 and 2015, and jail populations decreased by 27 percent during the same period. A different picture emerges, however, in the county-by-county data. Declines in the jail population and in prison

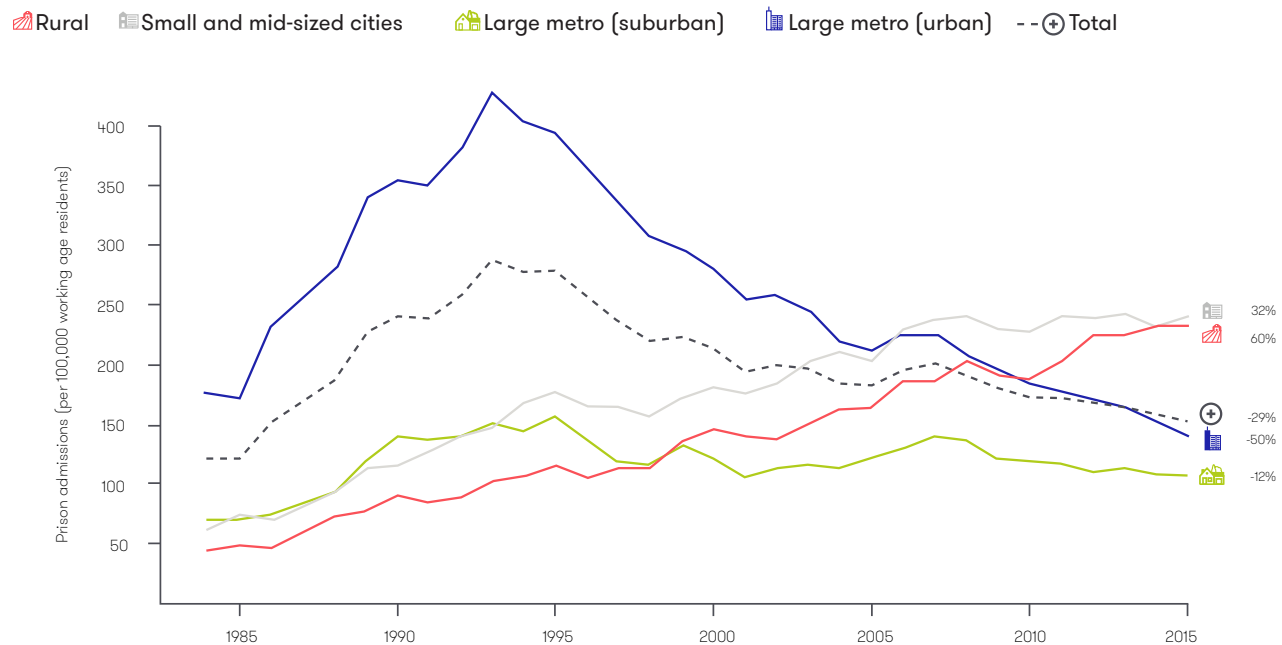
admissions statewide have been entirely driven by decarceration in the three largest cities (New York City, Buffalo, and Rochester).

Jail incarceration in New York used to be a largely urban phenomenon. New York City's jails held 56 percent of the state jail population in 1997; by 2015, that share had declined to 39 percent.⁴⁵ Prison incarceration in large urban and suburban cities shows a similar decline. Small- and mid-sized cities and rural counties, on the other hand, show a continued increase in prison admissions.⁴⁶ (See Figure 5, below.)

This is not a phenomenon unique to blue states like New York: in Texas and Missouri, similar patterns have emerged of decreasing incarceration in urban areas driving a statewide average decline that hides increases in more rural areas. In fact, in the 35 states for which there is reliable county-level data, there is an almost universal urban-to-rural shift in prison admissions, regardless of whether admissions are declining in the state as a whole. (See Table 2 at page 35 in the Appendix.) These geographic divergences can limit the usefulness of state-level assessments of incarceration patterns, and illustrate how important it is for researchers and journalists to ask how policing, prosecution, sentencing, and incarceration are changing locally.⁴⁷

Figure 5

New York prison admissions by geography



Stagnation: Incarceration remains at historic highs

In some states, each metric shows a relatively flat trend. While it is good news that prison and jail incarceration rates have stopped growing, these rates are still at all-time highs. In crafting reforms to address this issue, it is critical to look at the county-by-county data to see if the apparent stagnation is a true statewide dynamic, or if it is an average of diverging trends.

Some states mirror the overall national incarceration trend on both a micro and macro level: incarceration rates remain stagnant with perhaps a shift of a few percentage points one way or the other. This stagnation dynamic is apparent in Louisiana, which has changed its usage of prisons and jails little since 2000, despite many attempts at reform.⁴⁸ As of 2016, the state had still not reduced incarceration. (See Figure 6 at page 24.) Louisiana's incarceration rates across all metrics remain some of the highest in the country and in the world.⁴⁹ This may change as the result of a 10-bill legislative package passed in 2017 meant to reduce the prison population by 10 percent and the number of people on community supervision by 12 percent over the next 10 years.⁵⁰

Other “stagnant” states have experienced plateaus, but with a good deal of change in county-level dynamics. Overall prison admissions rates have stopped rising, but county-by-county data reveals that rather than true statewide stagnation, some counties have an increasing prison incarceration rate that is offset by declining rates in other counties. This is usually the result of the same urban-rural dynamic that is driving New York's decarceration trend, except that the cities in these stagnant states are not comparably large enough to offset the rural rise in incarceration. For example, Virginia has only experienced a 4 percent growth in prison admissions since 2000, but admissions from rural areas and smaller cities have increased substantially (56 percent and 34 percent, respectively) at

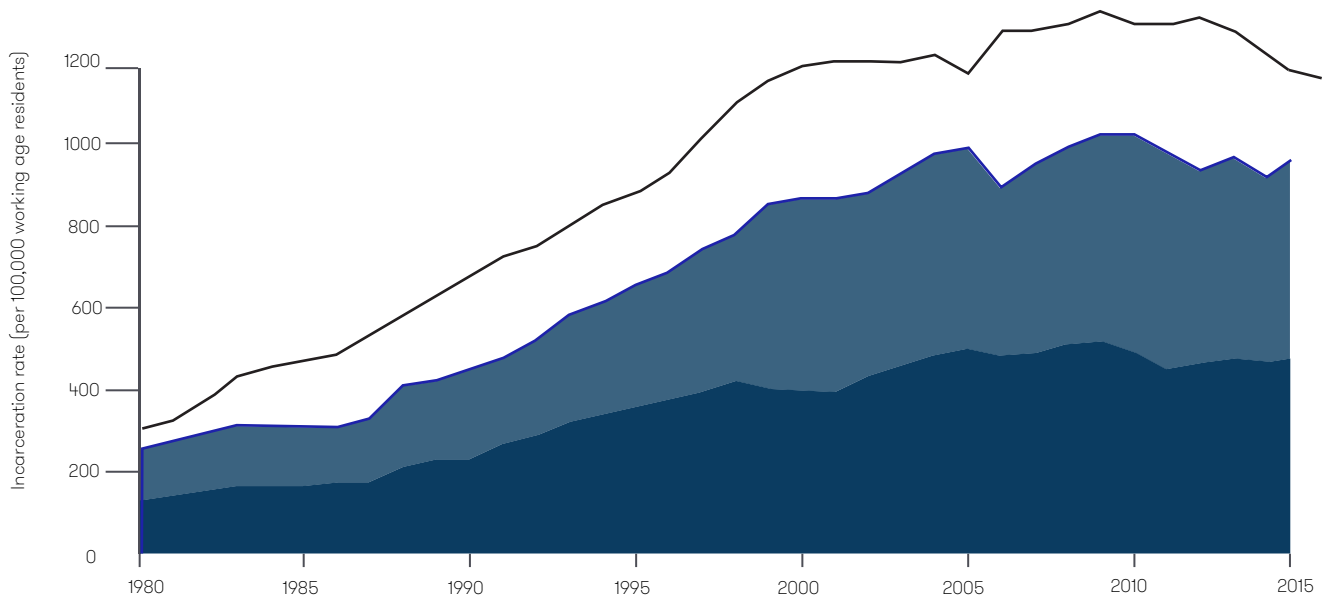
Figure 6

Louisiana's incarceration rate stuck near all-time highs

■ Sentenced jail population

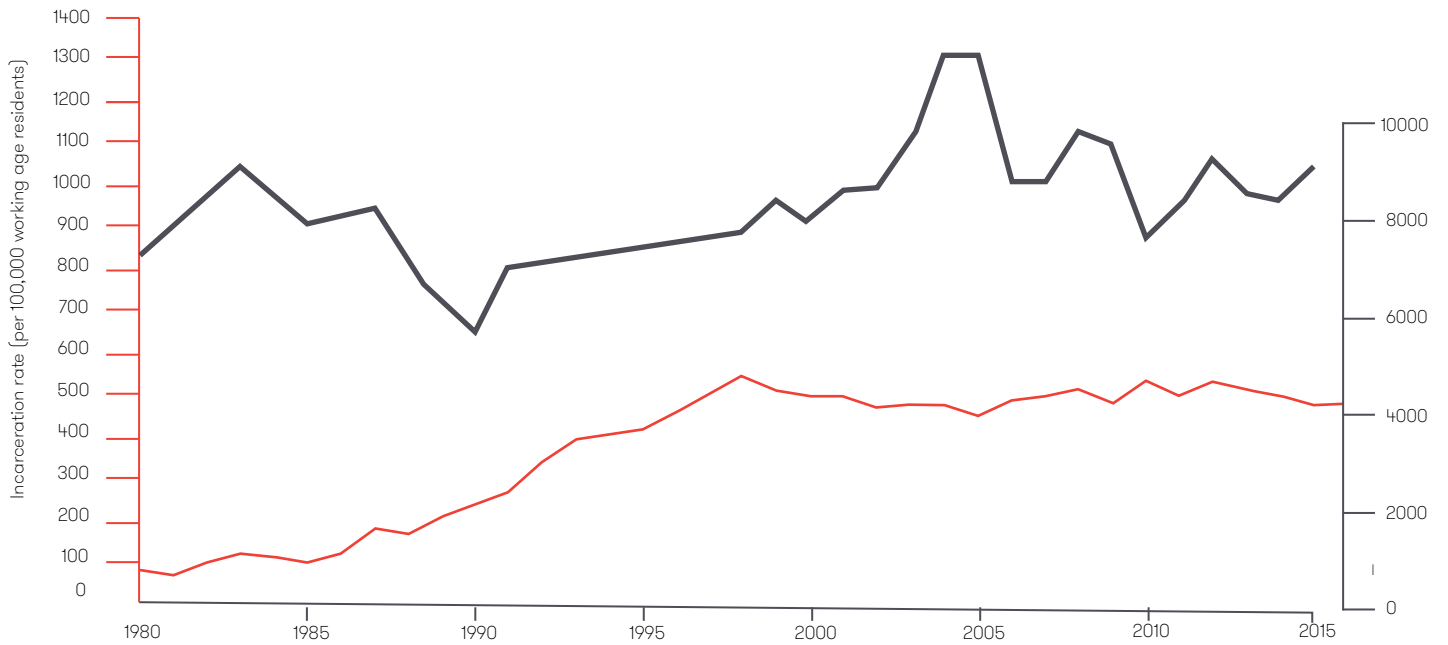
■ Pretrial jail population

— Total prison population



■ Prison admissions (left)

■ Jail admissions (right)



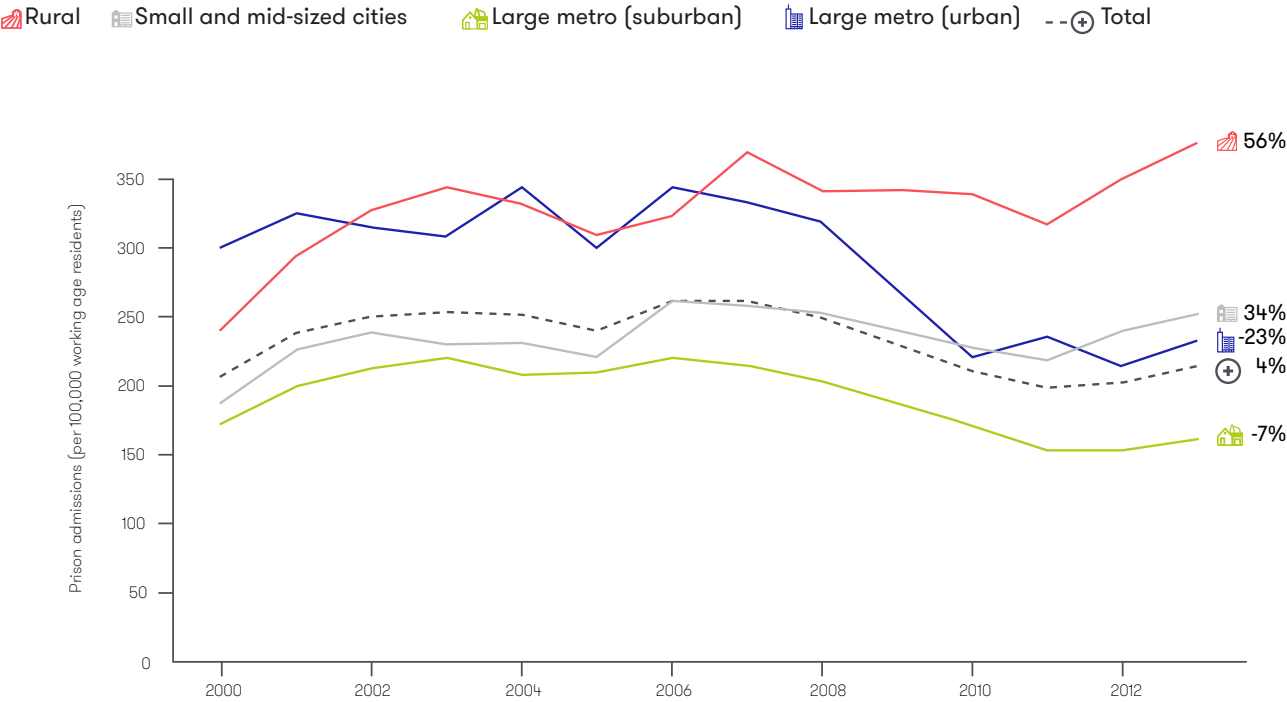
the same time that admissions in urban areas have been decreasing. These disparate dynamics create an apparent plateau in prison admissions when examined at the state level. (See Figure 7, below.)

A shifting landscape: Inverse effects on prisons and jails

Many jurisdictions have enacted reforms designed to drive down prison or jail populations. In isolation, these decarcerative reforms may be functioning as designed. But without a look at the full picture, including both recent prison admissions and the sentenced jail population, it is impossible to tell whether a jurisdiction is truly incarcerating fewer people, or whether it is merely shifting populations between prison and jail custody—a kind of incarceration shell game—without an appreciable drop in overall incarceration.

Figure 7

Virginia prison admissions by geography



Smaller prisons, larger jails

Many states have redefined sentencing policies to reduce the risk of prison incarceration. They have done this by reclassifying offenses that were formerly felonies as misdemeanors—thus exchanging the possibility of a custodial sentence in prison for the possibility of one in jail—or permitting people convicted of certain low-level felonies to serve their custodial sentences in local jail rather than in state prison.⁵¹ These reforms can have an overall decarcerative effect by simultaneously reducing the prison population and diverting more people from custodial sentences. However, it is also possible to merely create an appearance of decarceration by focusing narrowly on decreasing prison populations without consideration of a policy's impact on jail population. In addition, these reforms often come about in conjunction with the potential for multi-year sentences in jail, once the exclusive province of prisons. Jails are not designed to support long stays, which can mean harsh conditions even if sentences are shorter than prison sentences.⁵² (See “Why does it matter if people are in jail instead of prison?” at page 28.) Moreover, after release, regardless of whether one's time is served in state or local custody, the lasting effect of a criminal conviction remains largely unchanged.⁵³

Between 2010 and 2015, 11 states reduced their prison populations while simultaneously increasing the number of people held in jails. One state shifting populations between prison and jails is California. Motivated by a federal court order to reduce prison overcrowding, the state has reduced its prison admissions by 63 percent since enacting realignment legislation in 2011 that shifted the responsibility for many people in prison from overcrowded prison facilities to jails.⁵⁴ The legislation authorized multi-year jail terms for some felony sentences, and there has been a corresponding (but not equal) increase in the number of people serving sentences in local jails in the state, although the passage of Proposition 47 in 2014 has subsequently reduced jail populations.⁵⁵

Other states have implemented reforms with similar effects, if not similar methodologies: North Carolina also passed reform legislation in 2011 that aimed to reduce prison populations in part by sending people whose misdemeanor convictions (excluding impaired driving offenses) carried sentences of 91-180 days to jails in participating counties instead of state prison.⁵⁶ Changes to the law in 2014 resulted in the requirement that all misdemeanor sentences longer than 90 days be served in local jails, further increasing the jail population in participating counties.⁵⁷

Indiana provides another example of how populations can be shifted from prison to jail. Faced with an increasing prison population, Indiana passed legislation between 2013 and 2015 that added tiers to its felony

classifications and included a prohibition on sentencing people convicted of “lower level” felonies to prison.⁵⁸ The legislation also prescribes jail instead of prison stays for people with a prison sentence who have been released into community supervision programs (either as a function of diversion or parole practices), but who then violate the terms of their supervision.⁵⁹ A few years after implementation, it seems that these reforms have indeed been effective at reducing the number of people sent to prison, but at the cost of flooding local jails and increasing overall incarceration.⁶⁰ The state reported a 21.4 percent decline in the number of prison admissions in 2016, and no change in 2017.⁶¹ (See Figure 8, below). On the other hand, Indiana’s jail incarceration rate increased by 32 percent between 2015 and 2017.⁶² The state’s total incarceration rate (prison plus jail) was 1,076 per 100,000 residents in 2017, just below the all-time high of 1,083 in 2009 and up from 993 in 2015. Several Indiana counties are currently considering jail construction in order to make room for people serving sentences that once would have been served in a state prison.⁶³

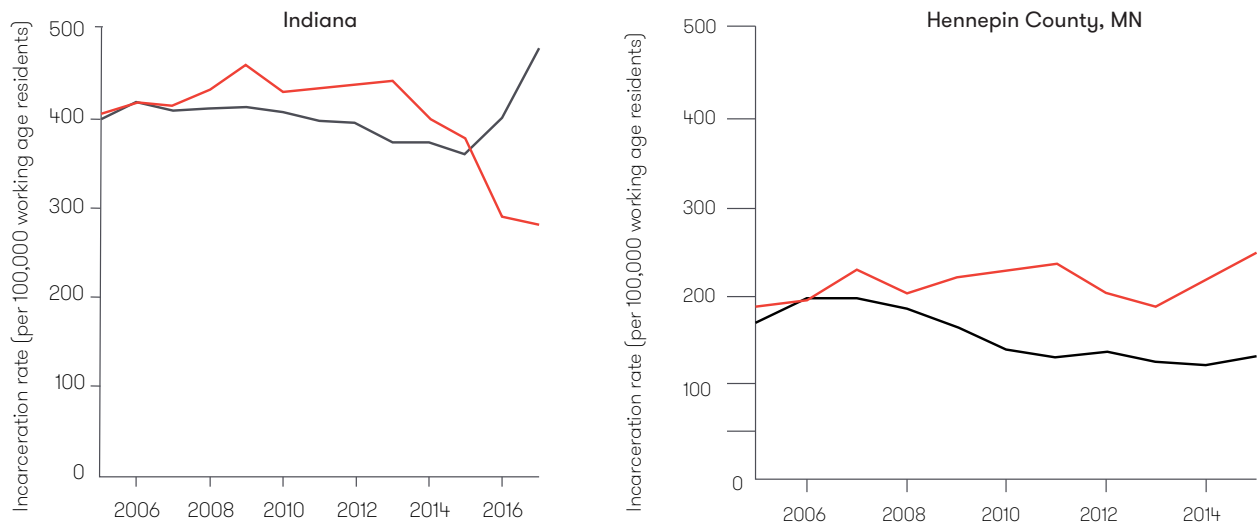
Shrinking jails, growing prisons

Historically, jails have tended to grow (or level out at capacity) alongside the growth of prison incarceration. Now, some counties are actually reducing the number of people held in jails, but simultaneously sending more people to state prison. Most policymakers and researchers have not considered this phenomenon, and it is worth exploring in more depth because it is happening in both high- and low-incarceration states. Criminal justice

Figure 8

Smaller prisons, larger jails (left) and Shrinking jails, growing prisons (right)

— Prison admissions — Jail population



Why does it matter if people are in jail instead of prison?

The trend of increased jail populations and declining prison populations might be seen as a net benefit to both communities and incarcerated people, as jails are often thought to be a less punitive alternative to prison. One relative advantage of jail over prison is proximity: most counties operate a jail and since people tend to be arrested, and thus incarcerated, in their home counties, people held in jails are likely to be closer to family and friends than if sent to state prison. Yet for the increasing number of people serving longer sentences in jail instead of state prison, the disadvantages of jail incarceration far outweigh the advantages.^a

While prison is meant to be a place of punishment, jail ostensibly has a primary role of holding people in pretrial detention temporarily while they await the resolution of their cases.^b The increasing number of people serving multi-year jail sentences becomes a burden that local jail facilities are often ill-equipped to manage.^c Because jails are mostly funded by local governments, greater budgetary constraints limit the quantity and quality of services that local facilities can provide.^d As a result, many jails struggle to accommodate and treat a population with significantly higher rates of mental illness compared to both the general population

and people in prison.^e Furthermore, people in jail are more likely to be suicidal or have substance abuse issues, factors that are compounded in chaotic, noisy, overcrowded jail environments.^f

Combined, these factors undermine the benefits that may come from serving time in jail instead of prison. Even in states that send large numbers of people to jail instead of prison, a lack of financial support from the state to county jails exacerbates the burden of care that local facilities face. However, the potential benefits of serving time in jail instead of prison may be achieved if states rethink how funds directed to county jails are utilized. In Utah, for example, some people serving prison sentences in county jails are benefiting from individualized services provided through state funding and the Department of Corrections' Inmate Placement Program.^g

Improving how state and local jurisdictions cooperate financially and programmatically as incarceration shifts from state prisons and local jails, while recognizing the evolving purpose of jails, is a step toward reducing the negative aspects of jail sentences and alleviating the burden of jail incarceration overall.

^a David C. May, Brandon K. Applegate, Rick Ruddell, and Peter B. Wood, "Going to Jail Sucks (and It Really Doesn't Matter Who You Ask)," *American Journal of Criminal Justice* 39, no. 2 (2014), 250-66 [survey results demonstrating that average people would be willing to do a longer sentence in prison if that meant they would avoid time in a local jail]. See also discussion in John Irwin, *The Jail: Managing the Underclass in American Society* (Berkeley, CA: University of California Press, 1985) [discussing the experience of chaos in local jails]; and Michael L. Walker, "Race Making in a Penal Institution," *American Journal of Sociology* 121, no. 4 (2016), 1051-78 [ethnography showing how jails are managed in ways that increase risk of intra- and inter-racial violence].

^b The role of local jails has transformed in response to the rise in mass incarceration. May, Applegate, Ruddell, and Wood, "Going to Jail Sucks" (2014), at 251.

^c Natalie R. Ortiz, *County Jails at a Crossroads: An Examination of the Jail Population and Pretrial Release* (Washington, DC: National Association of Counties, 2015), 8, <https://perma.cc/M9RL-R5XY>.

^d Amy L. Solomon, Jenny W.L. Osborne, Stefan F. LoBuglio, et al., *Life After Lockup: Improving Reentry from Jail to the Community* (Washington, DC: Urban Institute, 2008), 11-13, <https://perma.cc/F2PQ-Y8T9>.

^e Jeffrey L. Metzner, Fred Cohen, Linda S. Grossman, and Robert M. Wettstein, "Treatment in Jails and Prisons," in *Treatment of Offenders With Mental Disorders*, edited by Robert M. Wettstein (New York: Guilford Press, 1998), 211, 230; and Linda A. Teplin and Ecford S. Voit, "Criminalizing the Seriously Mentally Ill: Putting the Problem in Perspective," in *Mental Health and Law: Research, Policy and Services*, edited by Bruce D. Sales and Saleem A. Shah (Durham, NC: Carolina Academic Press, 1996), 283, 294-95. See also Craig Haney, Jennifer K. Johnson, Kathleen Lacey, and Michael Romano, *Justice That Heals: Promoting Behavioral Health, Safeguarding the Public, and Ending Our Overreliance on Jails* (Palo Alto, CA: Stanford Law School, 2016) [the authors support a proposal to address the intersection of behavioral health and the criminal justice system outside of jail], <https://perma.cc/EVZ4-W5WS>.

^f From 2007–2009, 63 percent of the sentenced jail population met DSM-IV criteria for drug dependence and abuse, compared to 58 percent of state prisoners. See Jennifer Bronson, Jessica Stroop, Stephanie Zimmer, and Marcus Berzofsky, *Drug Use, Dependence, and Abuse Among State Prisoners and Jail Inmates, 2007–2009* (Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, 2017), <https://perma.cc/22BB-LALR>. The jail suicide rate, 50 per 100,000 people held in local jails in 2014, is 2.5 times higher than the prison suicide rate [20 per 100,000 people held in state prisons]. See Margaret E. Noonan, "Mortality in Local Jails, 2000-2014—Statistical Tables" (Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, 2016), <https://perma.cc/NF8T-3FKD>; and Margaret E. Noonan, "Mortality in State Prisons, 2000-2014—Statistical Tables" (Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, 2016), <https://perma.cc/DKJ7-E3GZ>.

^g Mariah Noble, "How Utah's County Jails Have Helped Some State Felons Rebuild Their Lives and Create a Community," *Salt Lake Tribune*, March 18, 2018, <https://perma.cc/DBT2-MVU6>.

Incarceration and correctional control

No look at incarceration, however in-depth, reflects the complete footprint of the corrections system. The missing piece of the puzzle is the population under community supervision, which is as much as double the size of the population incarcerated in prison and jail.^a For example, while Minnesota as a whole has a relatively low rate of both prison and jail incarceration (ranked 48th for both), its rate of probation supervision is fifth highest in the nation, giving it an overall correctional control rate equal to Alabama, and 50 percent higher than California.^b While this report does not address people under community correctional supervision, it is important to acknowledge that growing numbers of people under probation and parole supervision, coupled with rates of violations, affect the metrics of incarceration.

For example, Lancaster County, Pennsylvania, has seen the rate of people sent to state prison system climb, even as the rate of local jail incarceration has declined. But unlike some other jail-versus-prison admission rate shifts, the number of prison commitments in Lancaster County appears to be driven in large part by readmissions for parole violations. The 107 percent increase in admissions to Pennsylvania Department of Corrections custody between 2005 and 2016 was driven by a 189 percent increase in admissions due to parole violations; while new court commitments increased by 61 percent.^c Statewide, revocations have accounted

for more Pennsylvania prison admissions than new court commitments since 2015, which appears to be a result of increased numbers of people on parole, rather than a higher rate of revocation.^d Pennsylvania is already among the states with the highest rates of community supervision, and efforts to reduce the incarcerated population by pushing people into an overburdened parole system may have had the unintended consequence of sending even more people to prison, more frequently, and for longer periods.

Currently, there is a lack of comprehensive local data on community supervision. If researchers and reformers intend to address the full spectrum of incarceration policy and correctional control, collecting and studying prison admissions data separated by new commitments and revocations, as well as filling the gaps in available data on local-level community supervision, will be an important part of their work.

^a See Danielle Kaeble and Lauren Glaze, *Correctional Populations in the United States* (Washington, DC: Bureau of Justice Statistics, 2016), 12 & table 1, <https://perma.cc/XP4J-L27C>. See also Pew Center on the States, *One in 31: The Long Reach of American Corrections* (Washington, DC: Pew Charitable Trusts, 2009), <https://perma.cc/6UWA-S33P>.

^b See Michelle S. Phelps, "Mass Probation: Toward a More Robust Theory of State Variation in Punishment," *Punishment & Society* 19, no. 1 (2017), 53-73, <https://perma.cc/7TCJ-FZSY>. See also Kaeble and Glaze, *Correctional Populations in the United States* (2016), at 12.

^c The number of court commitments and parole revocation admissions by county was compiled from annual reports available from the Pennsylvania Department of Corrections. Pennsylvania Department of Corrections, "Reports," <https://perma.cc/WW9Q-LETV>.

^d Pennsylvania Department of Corrections, *Annual Statistical Report 2016* (Harrisburg, PA: Pennsylvania Department of Corrections, 2016), 3 & table 2, <https://perma.cc/3DWJ-WHT5>.

system actors can drive shifts between jail and prison with policies and practices including law enforcement decisions, prosecutorial charging and plea bargaining approaches, the speed at which cases are disposed, sentencing decisions made by judges, and decisions about revocation of community supervision made by probation and parole officers.⁶⁴ One

possible factor in these changes is that sending people to the state prison system rather than keeping them in local custody may be financially advantageous to a county given that almost all states foot the bill for prison beds and counties pay for jails.⁶⁵ If the goal of a policy change is to reduce incarceration, then further action is required to stop more people from going to state prison.

Hennepin County (Minneapolis, Minnesota) has one of the lowest jail and prison incarceration rates among large cities in the Midwest. The current jail incarceration rate is half that of comparable counties like Polk County (Des Moines, Iowa) or Cuyahoga County (Cleveland, Ohio). Further, the jail incarceration rate has declined 20 percent since 2007. In 2016, local justice system stakeholders formed the Adult Detention Initiative, and have proposed further interventions that aim to reduce the jail population by another 10 percent.⁶⁶ Yet in contrast to the declining jail population and incarceration rate, the county is sending more people to prison than ever, with a 50 percent increase in prison admissions by new court commitments between 2007 and 2015. (See Figure 8, above, at page 27.)

Other Minnesota counties, especially Stearns County (St. Cloud), as well as seven states—Georgia, Kansas, North Carolina, New Hampshire, Nevada, West Virginia, and Wyoming—follow a similar pattern of declining jail incarceration and increasing prison admissions. Statewide in Minnesota, prison admissions were up 17.2 percent between 2010 and 2017, from 6,999 to 8,200.⁶⁷ This growth appears mostly due to revocations of community supervision, up 37.4 percent from 2,467 to 3,391 during the same period.⁶⁸ (See “Incarceration and correctional control” at page 29.) Part of this increase is also due to new “tough on crime” legislation, including mandatory minimums and enhanced penalties.⁶⁹

Growth continues

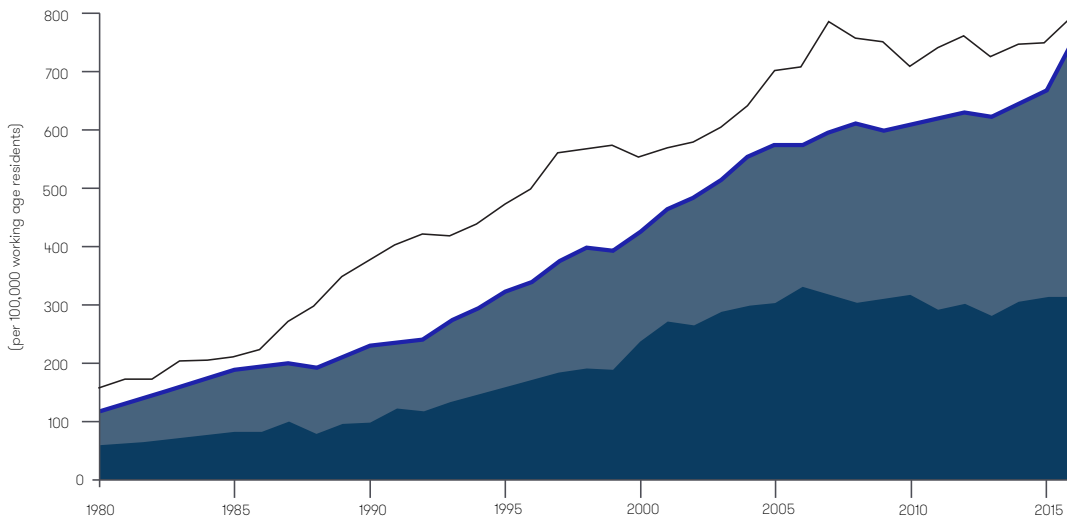
Hidden behind the apparent U.S. incarceration plateau is a more disturbing dynamic: continued growth. The states of Arkansas, Kentucky, Oklahoma, and West Virginia continue to incarcerate people in both prisons and jails at all-time high rates that keep increasing year after year. In fact, if Kentucky’s incarceration rate continues growing at the same rate that it has since 2000, everyone in the state will be incarcerated in 119 years. (For growth in Kentucky, see Figure 9 at page 31.) And, in Oklahoma, where the overall prison incarceration rate was second highest in the nation in 2017, the prison population is projected to grow by 25 percent over the next decade.⁷⁰ But in 2016, Oklahoma voters passed State Questions 780 and 781, reclassifying drug possession and low-level property offenses

from felonies to misdemeanors and funneling cost savings into community rehabilitation programs and, in 2018, the legislature passed additional criminal justice reform measures that might further reduce the prison and jail populations.⁷¹ Whether these efforts can turn the rising tide of mass incarceration in the state remains to be seen. Similar efforts at reform in Arkansas and West Virginia have yet to stem the growth of incarceration in those states, a phenomenon that merits further study.⁷²

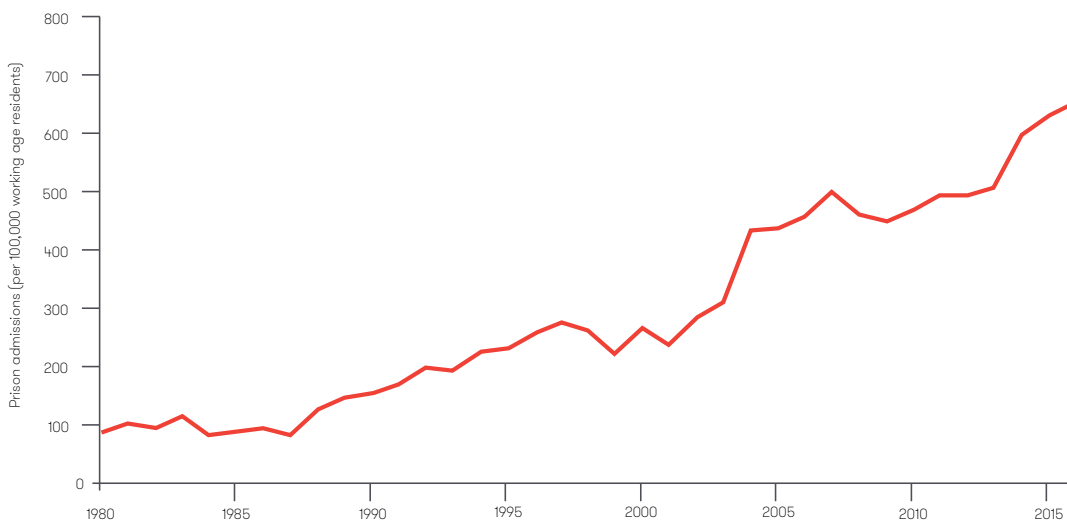
Figure 9

Continuing incarceration growth in Kentucky

— Total prison population ■ Sentenced jail population ■ Pretrial jail population



— Prison admissions



New data still needed

While prison population and admissions and the three jail metrics are key for evaluating changes in the use of incarceration, true reform must encompass more than incarceration, and reformers will need additional data to address the ways that the justice system impacts communities.⁹

- › First, states and local governments should measure the total numbers of people impacted by correctional supervision in community, both probation and parole, in a given year.
- › Second, jails should track the number of people sent to jail each year by race and gender to better understand and reduce disparities.
- › Third, more comprehensive information is needed on

people with complicated cases who are held in jail and might otherwise be released—for example those who have bail for one charge plus a hold for a missed court appearance warrant in another jurisdiction, or those who are not eligible for bail because they have also been incarcerated for a low-level offense or technical probation violation.

- › Fourth, accurate court and admissions data for probation and parole violations and misdemeanors is needed at more specific jurisdictional levels—city and town courts in addition to county courts.
- › Lastly, information on sentence and length of stay is needed to account for important differences in prison and jail usage across states.

⁹ Some scholars distinguish between mass incarceration and the carceral state; this paper addresses only one side of the story—numbers related to incarceration. See discussion in Katherine Beckett, “The Politics, Promise, and Peril of Criminal Justice Reform in the Context of Mass Incarceration,” *Annual Review of Criminology* 1 (2018), 235-59, <https://perma.cc/X9Z2-V3TG>.

Conclusion

The fine-grained metrics for interpreting incarceration presented in this report reveal the complicated reality of the era of reform: the nation's progress is uneven. The criminal justice system, as an amalgamation of thousands of systems on the city, county, state, and federal levels, is constantly shifting and evolving in response not only to statewide policy changes or court orders, but also to local police, prosecutorial, and judicial priorities.

Mass incarceration's rise, characterized by unified growth across states and counties, has not been supplanted by an even, nationwide decline in the number of people behind bars. To the contrary, the widely heralded “era of reform” seems never to have arrived in some jurisdictions, where growth has continued unchecked. Worsening incarceration in a handful of states and counties threatens to erode national progress, while remaining hidden by analyses used to study incarceration that rely solely on state prison population.

To be sure, the fragmentation of unified growth into the four different contemporary incarceration trends—growth, decline, stagnation, and jurisdictional shifts—is itself proof that some progress has been made toward unwinding mass incarceration: the single phenomenon of growth may well be a thing of the past. Reforms to criminal justice policy and practice—whether statewide as in South Carolina, or locally driven as in New York state—have lessened the toll of incarceration in the United States.⁷³ Furthermore, overall jail admissions have been trending down. People were sent to jail 10.6 million times in 2016, 3 million fewer jail admissions than 2008.⁷⁴ But still, even in states that have truly reduced the number of people behind bars from their peak, the specter of mass incarceration is alive and well. Both California and New York now send as many people to prison as they did in the 1990s, when California had the highest prison admissions rate in the country and New York was in the top half. Maybe the biggest change is that so many other places have become much worse, and the new normal is much more punitive.

This report emphasizes the need to examine the “old standard” metric of prison population in conjunction with the more flexible and granular metrics of jail admissions, pretrial jail population, sentenced jail population, and prison admissions in order to see a clearer picture of these contemporary dynamics of mass incarceration. With this information, researchers can evaluate how a state uses incarceration in a way that is sensitive and responsive to state and local policy shifts, and policymakers and advocates can better craft—and adjust—strategic, targeted reforms that will safeguard progress and truly undo the nation’s collective overreliance on incarceration. Only then will it be possible to chart a path toward a new universal dynamic of decline in both prison and jail populations, across urban and rural communities.

Appendix

Table 1

State incarceration percent change 2007-2015

	Prison population	Prison admissions	Jail admissions	Pretrial jail population	Sentenced jail population
Northeast					
Connecticut ^a	-23%	N/A	-24%	-17%	-52%
Maine	-8%	-22%	-14%	33%	-26%
Massachusetts	-13%	-21%	-38%	-5%	-38%
New Hampshire	-1%	7%	4%	-4%	-15%
New Jersey	-25%	-34%	-29%	-16%	-23%
New York	-19%	-23%	-26%	-16%	-24%
Pennsylvania	8%	10%	-21%	8%	-10%
Rhode Island ^a	-12%	N/A	-45%	-11%	-43%
Vermont ^a	-18%	N/A	-26%	2%	-26%
Midwest					
Illinois	2%	-25%	-15%	-20%	131%
Indiana	-1%	-9%	-28%	3%	-36%
Iowa	-1%	-6%	-5%	18%	-16%
Kansas	7%	19%	-18%	8%	-14%
Michigan	-13%	-1%	-26%	-4%	-18%
Minnesota	11%	0%	-12%	3%	-25%
Missouri	7%	-7%	-3%	10%	-35%
Nebraska	18%	6%	-7%	19%	-37%
North Dakota	12%	38%	11%	50%	-28%
Ohio	4%	-27%	-12%	-1%	-24%
South Dakota	2%	-21%	-3%	40%	-85%
Wisconsin	-3%	-25%	-24%	6%	-23%
South					
Alabama	2%	1%	-28%	-22%	-1%
Arkansas	21%	40%	53%	27%	12%
Delaware ^a	-5%	N/A	59%	-16%	-29%
District of Columbia ^b	N/A	N/A	-51%	-36%	-82%
Florida	-3%	-14%	-40%	-26%	-16%
Georgia	-10%	-23%	-22%	-25%	5%
Kentucky	-2%	24%	-12%	-2%	27%
Louisiana	-7%	-4%	5%	-2%	4%
Maryland	-14%	-13%	-36%	-35%	-16%
Mississippi	-16%	-35%	-3%	2%	6%
North Carolina	1%	41%	-22%	-12%	147%
Oklahoma	11%	6%	16%	11%	36%
South Carolina	-17%	-41%	-23%	-25%	27%
Tennessee	3%	-10%	-5%	21%	-6%
Texas	-13%	-8%	-24%	-10%	-27%
Virginia	-4%	-20%	-20%	-8%	-1%
West Virginia	20%	19%	-22%	22%	2%
West					
Alaska ^a	-30%	N/A	23%	7%	166%
Arizona	8%	-4%	-33%	-18%	27%
California	-29%	-76%	-22%	-31%	34%
Colorado	-20%	-26%	-23%	-12%	-19%
Hawaii ^a	-17%	N/A	-2%	11%	46%
Idaho	-6%	-5%	-27%	8%	-32%
Montana	5%	10%	-11%	19%	-5%
Nevada	-8%	-8%	-20%	-17%	19%
New Mexico	10%	-6%	7%	-7%	-34%
Oregon	5%	-6%	-10%	1%	-34%
Utah	-10%	-28%	-13%	-10%	3%
Washington	-4%	24%	-33%	-18%	-41%
Wyoming	10%	18%	-16%	-9%	-8%

^a Prisons and jails form one unified system. Prison and sentenced jail populations are estimated by separating the sentenced population based on sentence length; sentences greater than one year were assigned to the "prison" category.

^b The District of Columbia does not run a prison system. People sentenced to prison are transferred to the Federal Bureau of Prisons.

Table 2

Changing geography of prison admissions 2000-2013

	Large metro (Urban)	Large metro (Suburban)	Small and Mid-sized metro	Rural
Northeast				
Maine	--	--	60%	84%
Massachusetts	-15%	-3%	-36%	0%
New Hampshire	--	-48%	12%	57%
New Jersey	-45%	-32%	-22%	--
New York	-42%	-7%	33%	54%
Pennsylvania	-8%	133%	83%	174%
Midwest				
Illinois	-13%	-2%	4%	15%
Iowa	--	--	14%	19%
Michigan	-14%	-6%	-16%	24%
Minnesota	13%	46%	132%	96%
Missouri	-19%	17%	29%	44%
Nebraska	--	--	64%	35%
North Dakota	--	--	59%	94%
Ohio	-29%	35%	16%	63%
South Dakota	--	--	22%	22%
Wisconsin	-32%	-5%	17%	42%
South				
Alabama	8%	62%	35%	77%
Arkansas	--	-3%	13%	15%
Florida	-20%	-11%	17%	45%
Georgia	-21%	17%	-10%	0%
Kentucky	19%	197%	59%	122%
Louisiana	-24%	12%	12%	35%
Maryland	-25%	41%	42%	50%
Mississippi	--	0%	20%	6%
North Carolina	33%	9%	4%	14%
Oklahoma	-15%	9%	8%	22%
South Carolina	--	-42%	-28%	-30%
Tennessee	-29%	31%	67%	83%
Texas	25%	33%	57%	76%
Virginia	-23%	-7%	34%	56%
West Virginia	--	49%	148%	119%
West				
Arizona	19%	89%	23%	84%
California	-75%	-73%	-70%	-68%
Colorado	-8%	29%	48%	7%
Hawaii	--	--	53%	2%
Nevada	-3%	--	-28%	-8%
Oregon	-18%	32%	30%	12%
Utah	-38%	-30%	-17%	-16%
Washington	-34%	7%	35%	38%
Wyoming	--	--	30%	24%

Table 3

How has your state's incarceration changed compared to other states?

	Prison Population Rank		Prison Admissions Rank		Jail Admissions Rank		Pretrial Jail Population Rank		Sentenced Jail Population Rank	
	2000	2015	2000	2015	2000	2015	2000	2015	2000	2015
Northeast										
Connecticut ^a	8	19			39	48	34	40	35	49
Maine	49	49	43	43	50	44	48	45	45	38
Massachusetts	48	50	44	44	31	39	50	46	8	29
New Hampshire	46	47	42	36	46	46	45	47	39	39
New Jersey	31	46	25	39	29	35	20	33	36	42
New York	27	42	27	38	35	47	36	42	28	47
Pennsylvania	37	27	38	28	16	10	21	11	16	16
Rhode Island ^a	36	38			44	50	49	51	27	44
Vermont ^a	41	41			51	51	51	50	49	51
Midwest										
Illinois	28	33	7	17	41	41	24	36	48	45
Indiana	34	24	17	9	21	16	25	10	20	26
Iowa	40	40	22	22	48	43	35	35	50	48
Kansas	35	35	21	18	28	26	26	25	24	23
Michigan	14	22	33	33	34	37	33	44	29	24
Minnesota	50	48	40	30	47	49	47	49	34	43
Missouri	12	10	4	5	43	33	32	21	46	46
Nebraska	44	39	37	35	42	31	37	23	40	37
North Dakota	47	44	39	15	49	32	46	29	42	34
Ohio	22	16	12	21	40	38	42	39	31	32
South Dakota	30	20	19	4	38	29	41	19	25	41
Wisconsin	23	26	26	37	15	25	38	34	5	11
South										
Alabama	7	6	29	11	13	18	17	12	13	27
Arkansas	17	8	5	3	27	12	23	13	30	17
Delaware ^a	1	3			3	13	15	27	2	9
District of Columbia ^b					12	19	3	24	51	15
Florida	16	11	10	29	5	11	5	9	12	21
Georgia	11	13	15	24	2	5	4	7	4	4
Kentucky	29	14	16	1	9	2	10	8	9	2
Louisiana	3	1	3	2	1	1	2	2	1	1
Maryland	18	36	18	27	23	36	16	38	33	33
Mississippi	4	7	13	14	7	4	7	4	10	5
North Carolina	25	30	35	25	36	34	19	20	47	50
Oklahoma	5	2	11	8	26	9	12	6	44	10
South Carolina	9	18	14	34	18	21	8	15	43	30
Tennessee	24	21	9	19	4	3	11	5	3	3
Texas	2	9	1	6	10	22	14	14	7	31
Virginia	21	17	31	31	11	8	22	18	6	6
West Virginia	45	28	41	16	37	20	40	30	26	14
West										
Alaska ^a	6	4			6	7	1	3	38	7
Arizona	10	5	20	12	22	28	13	17	37	35
California	15	37	2	42	17	30	18	37	21	22
Colorado	26	31	24	23	30	27	28	32	23	18
Hawaii ^a	20	23			45	40	43	48	41	28
Idaho	19	12	6	7	19	23	27	16	17	25
Montana	32	32	30	10	33	24	31	26	32	19
Nevada	13	15	8	13	14	17	9	28	22	13
New Mexico	39	34	23	20	8	6	6	1	19	20
Oregon	38	29	36	32	25	42	30	41	18	36
Utah	42	45	28	41	24	15	39	31	11	8
Washington	43	43	34	40	32	45	44	43	15	40
Wyoming	33	25	32	26	20	14	29	22	14	12

^a Prisons and jails form one unified system. Prison and sentenced jail populations are estimated by separating the sentenced population based on sentence length; sentences greater than one year were assigned to the "prison" category.

^b The District of Columbia does not run a prison system. People sentenced to prison are transferred to the Federal Bureau of Prisons.

Endnotes

- 1 Some jail jurisdictions consist of regional jails serving more than one county. See Todd D. Minton, Scott Ginder, Susan M. Brumbaugh, Hope Smiley-McDonald, and Harley Rohloff, *Census of Jails: Population Changes, 1999–2013* (Washington, DC: Bureau of Justice Statistics, 2015), 20, <https://perma.cc/F5ZF-Q6BM>.
- 2 Vanessa Barker, *The Politics of Imprisonment: How the Democratic Process Shapes the Way America Punishes Offenders* (London: Oxford University Press, 2009); and John Hagan, John D. Hewitt, and Duane F. Alwin, “Ceremonial Justice: Crime and Punishment in a Loosely Coupled System,” *Social Forces* 58, no. 2 (1979), 506-27.
- 3 In 1998, Michigan modified its notorious “650 Lifer” law, eliminating the charge of life without the possibility of parole for possessing or delivering 650 grams of heroin or any mixture containing cocaine, and granted parole eligibility to more than 200 people sentenced under the law. The law was amended from a mandatory life sentence to “life or any term of years, not less than 20” and applied retroactively for those sentenced under the statute, making them eligible for parole. Michigan Public Act 314 (1998), <https://perma.cc/K2QN-TGRP>.
- 4 In 2002, Michigan eliminated almost all mandatory minimum sentences for drug possession and did away with lifetime probation, and in 2003 it adopted a “Five Year Plan to Control Prison Growth” promoting alternatives to incarceration for some offenses and for technical violations of parole, which are violations of the terms of parole supervision that do not themselves constitute a new crime. See *Growth in Michigan’s Corrections System: Historical and Comparative Perspectives* (Livonia, MI: Citizens Research Council of Michigan, 2008), <https://perma.cc/GP5R-M5JR>.
- 5 Michael H. Tonry, *Sentencing Fragments: Penal Reform in America, 1975–2025* (New York: Oxford University Press, 2016), 9.
- 6 For a discussion of reforms in Connecticut in 2003 and 2004, see Michael Jacobson, *Downsizing Prisons: How to Reduce Crime and End Mass Incarceration* (New York: New York University Press, 2005), 193-204, <https://perma.cc/3QY2-UPVN>. For an assessment of the “Texas Model,” see Council of State Governments (CSG), *Justice Reinvestment in Texas: Assessing the Impact of the 2007 Justice Reinvestment Initiative* (New York: CSG, 2009), <https://perma.cc/79BJ-ZAP9>. See also Adrienne Austin, *Criminal Justice Trends: Key Legislative Changes in Sentencing Policy, 2001–2010* (New York: Vera Institute of Justice, 2010), <https://perma.cc/HHM4-B4C3>.
- 7 For early statements about “smart on crime,” see Vincent Schiraldi, “Getting Smart on Crime: Many States are Questioning the Wisdom of Hard-Line Prison Policies,” *Albany Times Union*, December 7, 2003; 2009 Criminal Justice Transition Coalition, *Smart on Crime: Recommendations for the Next Administration and Congress* (Washington, DC: Constitution Project, 2008), <https://perma.cc/3PEE-J5CL>; Kamala D. Harris, *Smart on Crime: A Career Prosecutor’s Plan to Make Us Safer* (San Francisco: Chronicle Books, 2009); and U.S. Department of Justice (DOJ), *Smart on Crime: Reforming the Criminal Justice System for the 21st Century* (Washington, DC: DOJ, 2013), <https://perma.cc/LD8M-67F9>. Also see Kentucky Smart on Crime, <https://perma.cc/DD6A-RXKS> (accessed February 6, 2018).
- 8 Susan B. Tucker and Eric Cadora, *Ideas for an Open Society: Justice Reinvestment* (New York: Open Society Institute, 2003), <https://perma.cc/62XG-4MHS>; Bureau of Justice Assistance, “Justice Reinvestment Initiative,” <https://www.bja.gov/programs/justicereinvestment/index.html> (accessed February 1, 2018); and Marc Mauer and Nazgol Ghandnoosh, *Fewer Prisoners, Less Crime: A Tale of Three States* (Washington, DC: The Sentencing Project, 2014), <https://perma.cc/MV7L-8KJY>. A current count of the current and past states implementing JRI can be found here: <https://csgjusticecenter.org/jr>.
- 9 See Ram Subramanian, Rebecka Morena, and Sharyn Broomhead, *Recalibrating Justice: A Review of 2013 State Sentencing and Corrections Trends* (New York: Vera Institute of Justice, 2014), <https://perma.cc/ZC3U-9DSA>; and Rebecca Silber, Ram Subramanian, and Maia Spotts, *Justice in Review: New Trends in State Sentencing and Corrections 2014–2015* (New York: Vera Institute of Justice, 2016), <https://perma.cc/UU5L-TVPK>.
- 10 In 2014, California’s voters passed Proposition 47, reclassifying many drug and property crimes as misdemeanors and reinvesting cost savings in community-based treatment and education. California then passed Proposition 57 in 2016, enabling parole consideration for people convicted of some felonies and expanding earned time credits. See California Department of Corrections and Rehabilitation, “What You Need to Know About Proposition 47,” <https://www.cdcr.ca.gov/news/prop47.html>; and California Department of Corrections and Rehabilitation, “Proposition 57, The Public Safety and Rehabilitation Act of 2016,” <https://www.cdcr.ca.gov/proposition57/>. In 2016, Oklahoma voters passed State Questions 780 and 781, reclassifying drug possession and low-level property offenses from felonies to misdemeanors and funneling cost savings into community rehabilitation programs. D. Kent Meyers, Roger Strong, and Melanie Rughani, “Petition to the Oklahoma Secretary of State to Amend Statutes to Reform Criminal Sentences for Certain Property and Drug Offenses,” January 27, 2016, <https://perma.cc/6XXR-5EJ4>; D. Kent Meyers, Roger Strong, and Melanie Wilson Rughani, “Petition to the Oklahoma Secretary of State to Create the County Community Safety Investment Fund,” January 27, 2016, <https://www.sos.ok.gov/documents/questions/781.pdf>; and “State Question 780 & 781: Criminal Justice Reform Measures Approved by Voters,” *Tulsa World*, November 8, 2016, <https://perma.cc/2Z6U-Z5QJ>.
- 11 See Matt Arco, “Election Day 2014: Voters Approve Bail Reform Measure,” *NJ Advance Media*, November 4, 2014, <https://perma.cc/6K7A-M6TT>. See also State of New Jersey, *Attorney General Law Enforcement Directive No. 2016-6* (Trenton, NJ: State of New Jersey, 2016) (providing detailed guidance on bail reform implementation), <https://perma.cc/CRT5-RFUX>.
- 12 Some scholars have concluded that after *Kingsley v. Hendrickson*, 135 S. Ct. 2466 (2015), court oversight of incarceration is shifting back toward a closer review of conditions, in part through a closer review of the conditions for people held pretrial. See Margo Schlanger, “The Constitutional Law of Incarceration, Reconfigured,” *University of Michigan Public Law and Legal Theory Research Paper Series*, no. 535, (2017).
- 13 *Brown v. Plata*, 563 U.S. 493 (2011), 538-41, 539 (noting “The three-

judge court concluded that the population of California's prisons should be capped at 137.5% of design capacity. This conclusion is supported by the record").

- 14 Between 2008 and 2015, in California, the probation population fell by 18.9 percent, jail population decreased by 5.6 percent, prison population fell by 25.3 percent, parole declined by 28.7 percent, and the total correctional control population dropped by 20.7 percent. Probation, parole, and prison numbers are based on end-of-year figures, while the jail figure is based on the average daily population.
- 15 Realignment legislation shifted the responsibility of incarceration from the state to the county for certain populations: people convicted of "low-level" felonies, people who violate parole without a new conviction, and people released from prison on parole after a "low-level" felony conviction. See California AB 109 (2011) (2011 realignment legislation addressing public safety), https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120AB109. See also the discussion in Joan Petersilia, "California Prison Downsizing and Its Impact on Local Criminal Justice Systems," *Harvard Law & Policy Review* 8, no. 2 (2014), 327-57, <https://perma.cc/RU9N-9NHA>; Charis Kubrin and Carroll Seron, "The Prospects and Perils of Ending Mass Incarceration in the United States," *ANNALS of Political and Social Science* 664, no. 1 (2016), 16-24, <http://journals.sagepub.com/doi/pdf/10.1177/0002716215616341>; and Magnus Lofstrom and Steven Raphael, *Public Safety Realignment and Crime Rates in California* (San Francisco: Public Policy Institute of California, 2013), <https://perma.cc/8CEW-5SCP>.
- 16 Proposition 47 also directed cost savings to mental health and substance use services, truancy and dropout prevention, and victim services. For discussion of Proposition 47's impact on jail populations, see Magnus Lofstrom and Brandon Martin, *California's County Jails* (San Francisco: Public Policy Institute of California, 2017), http://www.ppic.org/wp-content/uploads/JTF_CountyJailsJTF.pdf. For discussion of the programs funded by the savings, see "Board Awards \$103m in Prop 47 Funds to Innovative Rehabilitative Programs," California Board of State and Community Corrections, June 8, 2017, <https://perma.cc/RG59-UU9W>.
- 17 Tennessee SB 2567 (2015), <https://perma.cc/MZU4-VL5H>.
- 18 Florida HB 477 (2017), <https://perma.cc/L6WR-84KR>.
- 19 John K. Iglehart, "Decriminalizing Mental Illness—The Miami Model," *New England Journal of Medicine* 374, no. 18 (2016), 1701-03, <https://perma.cc/XER5-LUHT>.
- 20 For news articles reporting on prison population, see for example German Lopez, "The US Prison Population Fell in 2016—for the 3rd Year in a Row," *Vox*, January 11, 2018, <https://www.vox.com/policy-and-politics/2018/1/11/16880166/prison-rate-mass-incarceration-2016>; Timothy Williams, "U.S. Correctional Population at Lowest Level in Over a Decade," *New York Times*, December 29, 2016, <https://www.nytimes.com/2016/12/29/us/us-prison-population.html>; and Adam Liptak, "U.S. Prison Population Dwarfs that of Other Nations," *New York Times*, April 23, 2008. <https://www.nytimes.com/2008/04/23/world/americas/23iht-23prison.12253738.html>. For scholarship based on prison populations, see for example Michelle S. Phelps and Devah Pager, "Inequality and Punishment: A Turning Point for Mass Incarceration?" *ANNALS of the American Academy of Political and Social Science* 663, no. 1 (2016), 185-203; Marc Mauer, "The Causes and Consequences of Prison Growth in the United States," *Punishment & Society* 3, no. 1 (2001), 9-20, <http://journals.sagepub.com/doi/pdf/10.1177/14624740122228212>; Theodore Caplow and Jonathan Simon, "Understanding Prison Policy and Population Trends," *Crime and Justice* 26 (1999), 63-120; and Chris Mai and Ram Subramanian, *The Price of Prisons: Examining State Spending Trends, 2010-2015* (New York: Vera Institute of Justice, 2017) (evaluating relationship between state prison population size and prison spending), <https://perma.cc/Q899-3W8S>.
- 21 Overall declines also mask the increasing number of incarcerated women in prison and jail (see Elizabeth Swavola, Kristine Riley, and Ram Subramanian, *Overlooked: Women and Jails in an Era of Reform* (New York: Vera Institute of Justice, 2016); and Aleks Kajstura, *Women's Incarceration: The Whole Pie 2017* (Northampton, MA: Prison Policy Initiative, October, 2017), <https://perma.cc/Q3KK-95SZ>; as well as the number of white people in prison and jail. See Ram Subramanian, Kristine Riley, and Chris Mai, *Divided Justice: Trends in Black and White Jail Incarceration, 1990-2013* (New York: Vera Institute of Justice, 2018), <https://perma.cc/NU83-ZXKJ>. See also Eli Hager, "A Mass Incarceration Mystery," Marshall Project, December 15, 2017, <https://perma.cc/7WHW-WCCM>.
- 22 Further, international comparisons of incarcerated populations are difficult without the inclusion of jail data. See Tapio Lappi-Seppälä, "American Exceptionalism in Comparative Perspective: Explaining Trends and Variation in the Use of Incarceration," in *American Exceptionalism in Crime and Punishment*, edited by Kevin R. Reitz (New York: Oxford University Press, 2018), 195-27.
- 23 The eight states are Georgia, Kentucky, Louisiana, Massachusetts, Mississippi, Montana, New Mexico and Utah. For many of these states, a large number of people in local jails are serving prison sentences, and the local facility has a contract to provide beds for (often overcrowded) state prison systems. See discussion in Jacob Kang-Brown and Ram Subramanian, *Out of Sight: The Growth of Jails in Rural America* (New York: Vera Institute of Justice, 2017), 13-16, <https://perma.cc/7FZV-FKEQ>.
- 24 Oklahoma Department of Corrections (ODOC) released a story explaining that BJS reports, while accurate, do not show the complete scope of incarceration in the state. ODOC argues that the 2016 data shows a prison population decline, but that if people sentenced but not yet transferred to DOC custody are included in the count, there is actually a prison population increase. See ODOC, "Oklahoma No. 2 in the Nation in Overall Incarceration in 2016; No. 1 in Female Incarceration," <http://doc.ok.gov/oklahoma-no-2-in-the-nation-in-incarceration-in-2016> (accessed February 6, 2018).
- 25 Vera researchers studying jail incarceration found a trend of declines among big cities and increases among less populous counties. See Kang-Brown and Subramanian, *Out of Sight* (2017).
- 26 *Ibid.* at 9-16.
- 27 Additional measures may be needed in particular counties or states. For instance, a state with a large population under community supervision may need to track technical violations

- separately from new admissions to prison or jail.
- 28 In addition, annual jail admissions have not been measured by BJS consistently between 1978 and the present. BJS has asked this question at different time scales, collecting new admissions in the Census of Jails and Annual Survey of Jails for a typical week in 1978; a year (July to June) from 1983 to 1991; a 24-hour period (June 30) in 1992 and 1993; the last week in June from 1998 to 2014; and a year (calendar) in 2015. Vera researchers supplement these BJS surveys with admissions data from the Death in Custody Reporting Program from 2000–2013 that uses calendar year jail admissions. See discussion of variety of questions used in BJS jail collections in Jacob Kang-Brown and Oliver Hinds, *Incarceration Trends Project: Data and Methods for Historical Jail Populations in U.S. Counties, 1970–2015* (New York: Vera Institute of Justice, 2018).
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 - 30 Zhen Zeng, *Jail Inmates in 2016* (Washington, DC: Bureau of Justice Statistics, 2018), 2, <https://perma.cc/AAC8-Z6VH>.
 - 31 Richard S. Frase, “Jails,” in *The Handbook of Crime and Punishment*, edited by Michael Tonry (New York: Oxford University Press, 1998), 474.
 - 32 See *Stack v. Boyle*, 342 U.S. 1, 4 (1951). While the Eighth Amendment prohibits excessive bail, courts can deny bail and detain people before trial in consideration of public safety, see *United States v. Salerno*, 482 U.S. 739, 754–55 (1987). Under federal bail law, in making pretrial release or detention decisions, courts consider factors including the nature of the offense charged, strength of evidence, prior offending history, and flight risk. See 18 U.S.C. §3142, as amended in 1984; and John Jay College of Criminal Justice, *Pretrial Practice: Rethinking the Front End of the Criminal Justice System* (New York: John Jay College of Criminal Justice, 2016), 6, 14–22, <https://perma.cc/E5QK-SQC6>. The court considers various factors in making this decision, including the likelihood that the person will comply with conditions of release, whether they are a danger to the community, and the probability that they will return for the trial. See for example American Bar Association, *Standards for Criminal Justice: Pretrial Release* (3rd ed. 2007), Standard 10-1.4 (conditions of release), <https://perma.cc/3NPW-24UL>.
 - 33 John Jay College, *Pretrial Practice* (2016), at 15–19. Limited data on bail in courts is available but, according to a BJS study of the 75 largest counties in the United States, it has been on the rise. Of felony defendants who were released in 2009, 61 percent included financial conditions and 49 percent included the use of surety bonds. This is up from 37 percent with financial conditions and 24 percent with surety bonds in 1990. See Brian A. Reaves, *Felony Defendants in Large Urban Counties, 2009—Statistical Tables* (Washington, DC: Bureau of Justice Statistics, 2013), 1, <https://perma.cc/XEQ6-6BSG>.
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 - 37 *Ibid.* at 14, 18.
 - 38 Misdemeanor convictions can carry sentences of one year or less. See for example the U.S. federal sentencing guidelines’ classification of offenses in 18 U.S.C. §3559.
 - 39 Franklin Zimring and Gordon Hawkins have analyzed the problem of states paying for local prison sentences as creating a perverse incentive, calling it “Correctional Free Lunch.” See Franklin E. Zimring and Gordon Hawkins, *The Scale of Imprisonment* (Chicago: University of Chicago Press, 1991), 211.
 - 40 For recent empirical studies of the issue see W. David Ball, “Tough on Crime (on the State’s Dime): How Violent Crime Does Not Drive California Counties’ Incarceration Rates—and Why it Should,” *Georgia State Law Review* 28, no. 4 (2012), 987–1082, <https://readingroom.law.gsu.edu/cgi/viewcontent.cgi?article=2695&context=gsulr>; and John F. Pfaff, “Escaping from the Standard Story: Why the Conventional Wisdom on Prison Growth is Wrong, and Where We Can Go from Here,” *Federal Sentencing Reporter* 26, no. 4 (2014), 265–70 (in which the author discusses the “moral hazard problem for county prosecutors”).
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 - 43 See discussion of sources of state prison data in Oliver Hinds, Jacob Kang-Brown, and Olive Lu, *People in Prison in 2017* (New York: Vera Institute of Justice, 2018), <https://perma.cc/57HX-N4AL>.
 - 44 See feature and analysis in Leigh Courtney, Sarah Eppler-Epstein, Elizabeth Pelletier, Ryan King, and Serena Lei, *A Matter of Time: The Causes and Consequences of Rising Time Served in America’s Prisons* (Washington, DC: Urban Institute, 2017), 32, <http://apps.urban.org/features/long-prison-terms/intro.html>.
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- Vera Institute of Justice, 2017), <https://www.vera.org/state-of-incarceration>.
- 47 For a review of recent literature on state-level stories about mass incarceration, see Michael Campbell, “Varieties of Mass Incarceration: What We Learn from State Histories,” *Annual Review of Criminology* 1 (2018), 219-34, <https://www.annualreviews.org/doi/abs/10.1146/annurev-criminol-032317-091957>.
- 48 Louisiana HB 442 (2013) allowed for the possibility of a suspended sentence for people charged with nonviolent, low-level felony drug possession; and Louisiana HB 149 (2015) reduced penalties for marijuana possession.
- 49 Dramatic reductions in incarceration rates in Seychelles have moved the United States back to the number one spot. See tables published in the World Prison Brief by the Institute for Criminal Policy Research at Birkbeck, University of London, <https://perma.cc/GSF9-5MW5>. Louisiana had the highest prison incarceration rate of U.S. states in 2017, according to Vera analysis. The combined prison and jail incarceration rate in Louisiana was also highest among U.S. states in 2015, the most recent year for which the Bureau of Justice Statistics has published a complete count of people held in local jails and prisons. See Danielle Kaeble and Lauren Glaze, *Correctional Populations in the United States 2015* (Washington, DC: BJS, 2016), <https://perma.cc/6B9R-BMY6>. See also analysis in Cindy Chang, “Louisiana is the World’s Prison Capital,” *Times-Picayune*, May 13, 2012 (arguing that “First among Americans means first in the world”), <https://perma.cc/KCN2-ESPB>.
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- 55 Lofstrom and Raphael, *Public Safety Realignment and Crime Rates in California* (2013). For discussion of Proposition 47’s impact on jail populations, see Lofstrom and Martin, *California’s County Jails* (2017).
- 56 Jamie Markham, “The Justice Reinvestment Act: An Overview,” *North Carolina Criminal Law*, June 30, 2011, <https://perma.cc/L38R-FEQN>.
- 57 North Carolina Session Law 2014-100, at 155-59, <https://perma.cc/ULU3-XYJ3>.
- 58 HEA 1006 revised Indiana’s criminal code, established a justice reinvestment advisory council to review and evaluate local corrections programs, and redirected funding from jail operations to mental health and substance abuse treatment programs. See Indiana HEA 1006 (2015); and Andrew Falk, *An Initial Evaluation of Indiana’s Criminal Code Reform (HEA 1006)* (Indianapolis, IN: Sagamore Institute, 2015), <http://www.in.gov/cji/files/Final%20Draft%20-%20ICJI%202015%201006%20Report.pdf>. See also Maureen Hayden, “Indiana’s Criminal Code Reform Impact Studied,” *Goshen News*, September 22, 2013 (discussing legislative goals and local concerns), http://www.goshennews.com/news/local_news/indiana-s-criminal-code-reform-impact-studied/article_8754c0b5-293b-53a6-8369-d708f97b8adf.html. Initial evaluations of HEA 1006 suggested that legislative change alone would not result in desired reductions to the prison population. Georgia-based Applied Research Services, Inc., projected continued prison population growth due to increased sentence lengths. See John Speir, Tammy Meredith, Kevin Baldwin, and Sharon Johnston, *Analysis of Fiscal Impact of House Enrolled Act 1006 Criminal Code Reform* (Atlanta, GA: Applied Research Services, Inc., 2013), <https://bloximages.chicago2.vip.townnews.com/nwitimes.com/content/tncms/assets/v3/editorial/7/96/796448d2-458c-504f-884a-4bc8c76d7368/52a7cf628b124.pdf>. Further, an American Institutes for Research evaluation found that reducing recidivism through diversion and local intervention would require an additional \$10.5 million per year. See G. Roger Jarjoura, Nathan J. Zaugg, and Konrad A. Haight, *Assessing the Local Fiscal Impact of HEA 1006* (Indianapolis, IN: American Institutes for Research, 2014), <https://perma.cc/H3P8-6HUG>.
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- 60 Niki Kelly, “DOC Cost-saving Move Disappoints,” *Journal Gazette*, September 20, 2017, <https://perma.cc/F97C-XA8C>. See also Mark Webber, “The Cost of Inmates: State Law Creates Shifts in County Jail,” *Republic*, March 3, 2017, http://www.therepublic.com/2017/03/03/the_cost_of_inmates_/.
- 61 E. Ann Carson, *Prisoners in 2016* (Washington, DC: U.S. Department

- of Justice, Bureau of Justice Statistics, 2018), 10-11, <https://perma.cc/59LZ-QETC>; and Indiana Department of Correction, *2016 and 2017 Annual Report* (Indianapolis, IN: Indiana Department of Correction, 2017), <https://perma.cc/JV2R-6SW8>. Indiana's major sentencing reform bill (Indiana HB 1006) moved individuals serving state time for low-level felonies back to their home counties to finish their sentences (to both county jails and community corrections). Kristine Guerra, "County Jails Fear Onslaught of Addicts, Mentally Ill From Prison," *IndyStar*, February 2, 2015, <https://perma.cc/6WAA-LW33>.
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Project, *Data Trends: South Carolina Criminal Justice Reform* (Washington, DC: Pew Charitable Trusts, 2017), <https://perma.cc/LL2R-2SZJ>. For New York, see analysis in “Decarceration: Cities lead the way” at page 21 of this report.

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