

# MICHIGAN BREAKS THE POLITICAL LOGJAM

## A NEW MODEL FOR REDUCING PRISON POPULATIONS

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## I. INTRODUCTION

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The United States has adopted a set of criminal justice policies that has produced a tidal wave of imprisonment in this country. Between 1970 and 2005, the number of men, women, and children locked up in this country has grown by an historically unprecedented 700%.<sup>1</sup> As a result, the United States locks up almost a quarter of the prisoners in the entire world.<sup>2</sup> In fact, if all our prisoners were confined in one city, that city would be the fourth largest in the country.<sup>3</sup> This tidal wave of mass incarceration has a devastating effect on those communities, mostly poor and minority, whose residents so disproportionately end up in our prisons. Of course, it is critical to prevent crime, but we need to ask if mass incarceration is really necessary to protect our public safety.

Michigan's experience offers a persuasive answer to that question. Between March 2007 and November 2009, Michigan did something remarkable. It reduced its prison population by roughly 8% during an era in which our incarcerated population continues its unprecedented growth nationally. Perhaps equally remarkable, Michigan accomplished this feat of "breaking the political logjam," as the Deputy Director of the Department of Corrections phrased it, without provoking a backlash that public officials have been insufficiently "tough on crime." Because these changed policies will also result in increased public safety, Michigan for the first time provides a possible model for other states seeking a smarter and more affordable criminal justice policy.

This report examines the measures that Michigan took to bring about that turn-around. Most significantly, these changes did not require the legislature to change the statutory penalties for criminal offenses. Michigan's successful reforms primarily involve the parole process, based on research that has identified practices and techniques that increase the accuracy of predicting which offenders can be safely released. The changes involve, however, far more than simply encouraging the parole board to increase its rate of approval of discretionary parole. The new policies are designed to provide offenders with individualized programming in prison, and re-entry services upon release, that are most likely to assure success on parole, based on evidence of what works to reduce crime and save money. Because Michigan's reforms are designed to fit into the specific structure of its system, they cannot simply be replicated in states lacking discretionary parole. The Michigan reforms are nonetheless important, because the nation's current level of incarceration is morally wrong and bad public policy, and because we can no longer afford to incarcerate 2.3 million people. Our nation's criminal justice policy requires fundamental change, and Michigan provides one example of how that change can work.

## II. WHY OVER-INCARCERATION IS BAD SOCIAL POLICY

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The Deputy Director of the Michigan Department of Corrections recently provided what may seem to be surprising testimony to the state legislature.

Studies show that there is little relationship between crime and incarceration and that the cost benefit of imprisonment does not support lengthy periods of incarceration as the best way to reduce crime. While increased incarceration has contributed to crime reductions in the past, studies indicate that it will prevent considerably fewer crimes in the future and may actually increase crime in Michigan. Re-arrest rates for former prisoners who serve one, two, three, four or five years in prison are nearly the same.<sup>4</sup>

While it may seem obvious that locking up more people would lower the crime rate, the reality is much more complicated. Sentencing and release policies, not crime rates, determine the numbers of persons in prison. This point is illustrated by examining what happened to incarceration rates and crime rates nationally in the period from 1991-1998. This was a period in which crime rates fell but rates of incarceration continued to increase. During that time, the states that experienced below-average increases in their rate of incarceration actually experienced above-average decreases in crime. The three largest states offer useful examples: Texas experienced a 144% increase in incarceration with a 35% drop in crime rates, and California had a 44% rise in its incarceration rate with a 36% drop in crime rates. In contrast, New York saw its incarceration rate increase by only 24%, yet nonetheless experienced a drop in crime rates of 43%.<sup>5</sup>

Since 1998, twelve states have experienced stable or declining rates of incarceration, yet these states were able to achieve on average the same level of reductions in the crime rates of the 38 states in which prison populations continued to grow.<sup>6</sup> Currently, only three of the ten states with the highest incarceration rates have crime rates that also rank in the top ten, again driving home the point that incarceration rates reflect deliberate policy choices, not crime rates.<sup>7</sup> Over-incarceration has a devastating effect on American society, an impact concentrated in poor and usually minority communities.<sup>8</sup> Imprisonment as punishment adds to the harm caused by the underlying crime as families lose breadwinners and more than a million children, at any given time, are separated from a parent.<sup>9</sup> Persons released from prison find their employment prospects ruined, so that imprisonment makes it more difficult for ex-offenders to avoid crime in the future.<sup>10</sup>

Much of our over-incarceration flood stems from the misguided War on Drugs. There has been a twelve-fold increase in the number of prisoners incarcerated for drug offenses since

1980. A majority of federal prisoners are incarcerated simply for drug crimes.<sup>11</sup> Most of these prisoners are black or Hispanic, and the experience of racial minorities illustrates why it is time for a cease-fire in the War on Drugs. For persons above 12 years of age, 9.8% of blacks and 8.5% of whites are users of illegal drugs. Despite that virtual parity in usage rates, 37% of those arrested for drug use are black, and 55% of those convicted of illegal drug use are black. At the end of the criminal justice pipeline, 74% of those who actually serve time in prison for drug offenses are African-American.<sup>12</sup> These disparities are simply an extreme example of the fact that we have two substantially separately criminal justice systems in this country, one for whites and one for minorities. As David Cole has bluntly said:

[O]ne need only imagine the public response if the current racial disparities in criminal justice were reversed. Imagine what kind of pressure legislatures would feel, for example, if one in three young *white* men were in prison or on probation or parole. Imagine what the policies of the death penalty would look like if prosecutors sought the death penalty 70 percent of the time when whites killed blacks, but only 19 percent of the time when blacks killed whites. Or imagine what our juvenile policies would be like if white youth charged with drug offenses were four times as likely as black youth to be tried as adults, and twice as likely to be placed outside the home. One thing is certain: the nation would not accept such a situation as “inevitable.”<sup>13</sup>

The existence of two mostly separate and definitely unequal criminal justice systems has major consequences for political power in the United States by undermining the political strength of minority communities. Many people know that hundreds of thousands of African-Americans were disenfranchised in Florida at the time of the 2000 election, possibly changing the course of American history.<sup>14</sup> Less well-known are the consequences of the interactions of two other policies: the strong tendency of states to site prisons in rural, mainly white areas, and the census policy of counting prisoners where they are imprisoned rather than in the communities where they lived, and generally will return, when released from prison.<sup>15</sup> Absent these two policies, several congressional districts would have to be redrawn, shifting political power to urban and minority communities from rural areas, and increased federal grant money would flow to impoverished urban areas.<sup>16</sup>

The current economic crisis has focused attention on another aspect of our over-incarceration boom. We can no longer afford to lock up so many people, as many of the states have finally come to recognize. For example, the Sentencing Project identified seventeen states that during 2008 had taken steps to reduce their levels of incarceration. These changes in particular states affected probation, parole, criminal code enforcement priorities, alternatives to prosecution, and systematic state efforts to reduce racial disparities in incarceration.<sup>17</sup>

These changes are long overdue, at a time when many states spend almost as much on criminal justice as they spend on health and hospitals, and some states spend almost as much on locking people up as they spend on higher education.<sup>18</sup> It is apparent that with so many states experiencing a fiscal crisis, and the states facing a total budget gap of 66 billion dollars in FY2009,<sup>19</sup> we simply cannot continue to choose to fund unchecked growth in prison populations rather than our health, education, and other social welfare needs.

### III. THE HISTORY OF MASS INCARCERATION IN MICHIGAN

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Michigan has long provided a textbook example of a dysfunctional criminal justice policy. Until very recently, Michigan had the sixth largest prison population among the states. Michigan also had the second highest rate of incarceration in the Midwest, and the eleventh highest in the country, although its crime rate ranking was only seventeenth.<sup>20</sup> Michigan's incarceration rate reflected in significant part its history of extraordinarily tough punishment for drug offenders. Persons convicted of possession of 650 grams of cocaine or heroin, as a first offense, received mandatory sentences of life in prison without the possibility of parole. No other state punished first offenders so harshly for comparable drug possession offenses. Although this mandatory life sentence was repealed in 1998, the Parole Board continued to grant parole to eligible lifers at the rate of 0.2% a year.<sup>21</sup> As a result, in 2002-2003, Michigan had the fourth-largest number of prisoners serving a life sentence of any prison system in the nation.<sup>22</sup> Lifers are particularly expensive to incarcerate, not simply because of their length of stay, but also because their health care needs escalate as they age. Further, the high concentration of lifers reflects a general characteristic of the Michigan system. Michigan is an outlier in the length of time that prisoners serve on their convictions, primarily because, prior to the changes in practice described below, the parole board refused to parole large numbers of eligible prisoners and the state frequently revoked parole for a violation of the conditions of parole in the absence of a conviction of a new offense.<sup>23</sup>

In addition, the cost of Michigan's prison system reflects one other unusual factor. Michigan is the only state with a high incarceration rate that also ranks above the state median in per-prisoner cost. The major reason for the high per-prisoner cost is high staff wages and benefits. While the annual cost per-prisoner nationally is \$23,429, the cost in Michigan is \$28,743 per prisoner. As of 2002, base pay for correctional officers in Michigan was the sixth-highest in the country, and wages and benefits account for 71% of the total operating costs of the prison system, in contrast to the norm that these expenses make up about two-thirds of total operating costs.<sup>24</sup>

The union that represents correctional officers in Michigan reports that the number of correctional officers declined from 10,600 to 9,200 between 2000 and 2005, despite an increase of several thousand in the prison population.<sup>25</sup> Nonetheless, one out of three state employees works for the Department of Corrections.<sup>26</sup> It is even more striking that, at a time when the average yearly cost of health care per-prisoner was \$4,370 for the nation, Michigan's per-prisoner cost was only \$2,841.<sup>27</sup> In short, while Michigan has opted for an unusually large and expensive prison system, it has failed to adequately fund health care within the system.

#### IV. THE COLLATERAL DAMAGE CAUSED BY MASS INCARCERATION: DISASTROUS MEDICAL CARE

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Unfortunately, Michigan's overcrowded prisons, combined with its underfunded prison health care system, have had disastrous consequences for many Michigan prisoners. A federal judge in *Hadix v. Caruso*, an ACLU case challenging medical care in several prisons in Jackson, Michigan, made findings in 2002 regarding hundreds of cases in which prisoners in just one prison complex received inadequate or delayed health care, or no care at all.<sup>28</sup>

These cases included a number of deaths. A physician appointed by the *Hadix* court, working with the medical director of the Michigan Department of Corrections, undertook a random review of six medical records of prisoners whose specialty care had been delayed. In just these six records, they found harm resulting from the delays that included a prisoner whose kidney had stopped working; a prisoner who required emergency by-pass surgery; a prisoner with known symptoms of bowel cancer who had his diagnosis delayed for over a year; and another prisoner who begged medical staff for care while a skin mole grew into a black-red mass. It took over ten months for that last prisoner to receive a biopsy, which confirmed that during the delay the prisoner's melanoma had metastasized. Subsequently, his chemotherapy was interrupted because staff did not order the drugs in a timely manner. In fact, 30-40% of cancer patients within the prison complex did not receive treatment within the time frames set by their physician.<sup>29</sup>

A randomized study of medication prescriptions found that each month hundreds of prisoners within the complex had their medications interrupted. There was no functioning system to assure renewals of prescriptions even when staff knew of the need. The physicians canceled scheduled patient visits without cause. At the time, half of the registered nurses positions were not filled by permanent staff, and 60% of those RN positions were filled by LPNs, who were performing health care functions that they were not licensed to perform. Over 60% of dialysis patients experienced delays or interruptions in receiving their prescribed medications. Most of the intravenous medications on hand to treat septic dialysis patients were months or years past their expiration date. An outside nephrologist who reviewed a number of deaths in the dialysis unit discovered critical failures of treatment.<sup>30</sup>

One particular prisoner death, brought to light by the *Hadix* case, came to symbolize the systemic failures of the health care system. Timothy Souders arrived in prison in March 2006, with a history of cardiac risk factors and thyroid disorder, as well as a history of bipolar disorder and depression. Two months later, the only psychiatrist for the 1400 prisoners at the facility went on medical leave. In August, Mr. Souders was sent to segregation for taking an unauthorized shower on a day in which the heat index was over 90. He was placed in a box-car cell, meaning a cell with a solid metal door, on the sixth tier of his cellblock. When staff

opened the food slot in the door, which is how staff talked to prisoners, on hot days they could feel a blast of hot air from the entirely enclosed cell.<sup>31</sup>

After Mr. Souders attempted to flood his sink, he was put into top-of-bed restraints, with metal restraints on his wrists and ankles connecting him to a concrete slab. That day the psychologist in charge of mental health services characterized him as “floridly psychotic” but he stayed in restraints. From August 2 to August 6, 2006, the video camera in the cell shows him screaming incoherently. According to the segregation logbook, he rarely accepted water. For the first two days, the camera frequently fogs up because of the heat and humidity in the cell. He urinated on himself in restraints and developed burn-like sores on his body. A prison physician was called to examine him but declined to do so because Mr. Souders urinated on the examining table.<sup>32</sup>

On August 6, correctional officers walked Mr. Souders to the showers; the video shows him staggering. Shortly thereafter the restraints were removed. He then fell to the floor and was unable to get up. A nurse examined him in his cell and told him that his pulse was faint, a symptom that indicated a drastic fall in his cardiac output. The nurse then left his cell without doing anything to get him treatment. For the next hour there was no movement in the cell. The staff reentered the cell because Mr. Souders did not appear to be breathing. He was pronounced dead shortly thereafter, at the age of 21. The autopsy determined that the cause of death was hyperthermia (overheating) with dehydration as a secondary cause.<sup>33</sup>

In February 2007, “60 Minutes” broadcast a news story, using video from the cell, about Mr. Souders’ death.<sup>34</sup> Thereafter, the National Commission on Correctional Health Care issued a report, commissioned by the state, about health care within the Michigan Department of Corrections. The Report found a physician within the system whose medical records were so poorly maintained, with errors of spelling and language so extensive, that parts of the records were incomprehensible. The Report also criticized the pharmacy company employed by the system, which caused predictable delays in “same day” medications, since the company’s warehouse shipped medications to Michigan from Oklahoma. The list of approved medications lacked classes of medications that were needed, and cumbersome procedures to obtain a medication not on the approved list posed serious potential for delays.<sup>35</sup>

The electronic medical record system used by the prison system was so dysfunctional that the Report suggested that Michigan either stop or suspend its usage, at least for some functions, until the problems could be fixed. The Report also criticized the productivity of the staff, because physicians were seeing 8-12 patients per day, rather than the 20 a day that would be expected. Many of the problems reflected Michigan’s decision to contract health care to a private provider. In a decade of contracting out health care, the Department of Corrections had never taken a single formal action to enforce the requirements of the contract. The private company frequently reduced staffing below that required by the contract, but the state ignored the violations. Indeed, the state could not supply the NCCHC with a single one of the monitoring reports that the company was contractually required to produce.<sup>36</sup>

## V. CHANGE COMES TO MICHIGAN

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News stories about botched health care in the prison system presumably contributed not only to the governor's decision to request the NCCHC Report, but also to the response from the Department of Corrections.<sup>37</sup> The unfavorable publicity, in conjunction with the financial crisis that hit Michigan particularly hard, caused the Department to implement policy changes that significantly increased parole grants, reduced parole revocations, and increased the number of prisoners given compassionate medical release. Of particular note, parole revocations are down by 42% since their high-water mark in 2002.<sup>38</sup> As a result, the Michigan prison population has fallen by about 8%,<sup>39</sup> and even this calculation does not take into account that, before these steps, the population had been increasing by about 160 prisoners each month.<sup>40</sup>

## VI. THE MICHIGAN INITIATIVES

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Ironically, Michigan is not one of the seventeen states identified by the Sentencing Project as among those changing criminal justice policies in 2008 to reduce their over-reliance on imprisonment.<sup>41</sup> In fact, however, Michigan has undertaken what may be the currently most effective changes to reduce incarceration of any of the states. The epiphanies among the state's political leadership, and the leadership of the Michigan Department of Corrections, that produced these reductions came primarily as a result of the ongoing financial crisis in Michigan, and a concern about the bad publicity related to prison health care, rather than from an awakening to the harm caused by mass incarceration.<sup>42</sup> For several years before the national economic crisis that began in 2008, Michigan's economy had been reeling because of the woes of the automobile industry, so that the state could no longer afford its extraordinarily expensive prison system. At the same time, the cost of its prison system has continued to soar. While in FY1997, the state spent about one-sixth of its general budget on locking people up, nearly one-quarter of the budget was devoted to incarceration in FY2007.<sup>43</sup> By FY2008, Michigan was spending almost two billion dollars per year on prisons.<sup>44</sup>

This year, facing a budget gap of \$1.4 billion, Michigan announced plans to close eight prison facilities, with a projected budget savings of \$120 million. The prison population was down to 47,634 on November 20, 2009<sup>45</sup> from a high of 51,554 in March 2007,<sup>46</sup> the month after the "60 Minutes" broadcast related to the death of Timothy Souders. In the Michigan Department of Corrections budget for FY2009-10, direct expenditures for operating prison facilities were reduced by approximately \$192 million while the budget for various initiatives to reduce the prison population was increased by about \$59 million.<sup>47</sup>

These new initiatives to reduce overcrowding began in 2007, when the Michigan Department of Corrections initiated programs that have been refined over time. As a Michigan Department of Corrections official bluntly stated in testimony to the Michigan legislature, these steps "have broken the political logjam that has consistently stymied many prior justice policy reform proposals,"<sup>48</sup> by providing incentives for various stakeholders to support the initiatives and without requiring politically-sensitive reductions in statutory penalties for criminal offenses.<sup>49</sup>

The Governor, the Speaker of the House, and the Majority Leader of the Senate formed a working group that also included the state budget director, the Director of the Department of Corrections, and various other members of the House and Senate.<sup>50</sup> The deliberations of the working group were supported by technical expertise from the Council of State Governments and the Public Safety Performance Project of the Pew Center on the States. With this technical assistance, the working group was able to examine models of the potential effects of various policy changes on the twin goals of reducing incarceration rates in order to save money and protecting the public safety from additional crime.<sup>51</sup>

## A. The Michigan Prisoner ReEntry Initiative (MPRI)

Most of these steps involve implementation of the Michigan Prisoner ReEntry Initiative (MPRI). MPRI links re-entry preparation efforts within the prison system itself to locally-developed re-entry support programs, and also links prisoner participants to the parole board process, in a comprehensive strategic initiative to increase parole board grants and reduce failures by those released on parole.<sup>52</sup> As part of the MPRI, the parole board undertook a review of all prisoners whose current sentences involved only drug or other non-violent crimes. Parole board members were also provided with additional training and improved assessment instruments.

In addition, the prison system expanded its resources for the provision of evidence-based programming and services that prisoners who were not originally paroled when initially eligible need to succeed on parole. These prisoners who have passed their expected release date (ERD) include groups with special needs, such as women, prisoners with significant medical or mental health needs, and older prisoners.<sup>53</sup> This focus on prisoners who were not paroled by their ERD has by itself reduced that population by more than 10%.<sup>54</sup> Overall, with the implementation of the MPRI program and the development of focused re-entry preparation within the prison system, the percentage of prisoners paroled on their ERD has increased to more than 70%.<sup>55</sup> As a result, the percentage of prisoners serving time past their ERD fell from 31% to 25% in just two years.<sup>56</sup>

The MPRI program begins when the prisoner enters the Department of Corrections, with an assessment of the prisoner's risks, needs and strengths. The program is designed to provide programming that matches the prisoner's needs and addresses his or her risks of re-offending. Staff utilize a software program, Correctional Offender Management Profiling for Alternative Sanctions (COMPAS), as a classification instrument for decisions about treatment, institutional placement, and supervision.<sup>57</sup> The result of this classification process is a Transition Accountability Plan that serves to guide interventions and services in order to allow the prisoner to return to the community while reducing the potential risk to public safety.<sup>58</sup> The COMPAS software allows outcome tracking and reporting, consistent with the focus on evidence-based interventions.<sup>59</sup>

Approximately 60 days prior to the prisoner's ERD, the second phase of the MPRI begins. At this point, more specific re-entry plans are prepared. The revised re-entry plans address such items as housing, employment and services for addiction and mental illness.<sup>60</sup> Another part of Phase II of MPRI is the development of a parole plan that includes information for the parole board about the availability of services in the community to which the prisoner will return as well as information about the potential public safety risks that release will pose.<sup>61</sup> At this point, a prisoner approved for parole through MPRI will be transferred to one of the facilities designated for intensive preparation for parole release.<sup>62</sup> Each of these fourteen facilities employs a facility coordinator and an institutional parole agent in order to assure appropriate planning for the transition to re-entry.<sup>63</sup> The re-entry team from the facility meets with community service providers to provide a seamless transition back to the community.<sup>64</sup>

Integration of community services is a critical component of MPRI. MPRI is now established in every Michigan county, with local community leaders serving as part of a team that develops a comprehensive local plan addressing the availability of sixteen service areas, such as housing, employment, substance abuse services, and transportation.<sup>65</sup> The team also includes law enforcement and victims' rights stakeholders,<sup>66</sup> which provides a degree of protection against political attacks on the program. The warden of the local prison facility that provides MPRI services and a local manager of the MPRI program serve as two of the four co-chairs of the local team.<sup>67</sup>

The third phase of MPRI begins when the prisoner is released. At this stage, community support is expected to be in place to assist the ex-prisoner with locating housing, employment, and any specific treatment needs.<sup>68</sup> The community support and supervision includes provisions for graduated sanctions if the ex-prisoner gets off track, so that minor rule-breaking is addressed before it escalates in a productive manner rather than by revocation of parole for a technical offense.<sup>69</sup> The impact of the changed focus of the Department of Corrections on re-entry rather than incarceration has been remarkable. The numbers of parolees returning to prison with new sentences as well as the numbers of parolees returned to prison for technical violations have both fallen, with the overall parole revocation rate at the lowest rate since these data were tracked.<sup>70</sup>

Two important caveats need to be mentioned. The description of the MPRI program here is taken almost entirely from the state's own description of what it has developed, and so it will take time to evaluate the actual quality of the services delivered under the plan. In addition, the state's descriptions make clear that faith-based programs will provide a significant component of the services made available to prisoners, but without enough detail regarding arrangements for these services to determine whether these services could pose an Establishment Clause problem.<sup>71</sup>

## **B. The Executive Clemency Advisory Council**

The Michigan Department of Corrections has also initiated a review of the potential for parole or commutation of medically fragile prisoners. In addition an Executive Clemency Advisory Council was established in February 2007 to identify and review potential candidates for release based on reasons such as declining health.<sup>72</sup> As of August 2007, the Council had recommended 85 prisoners for commutation.<sup>73</sup> This year the Governor has made additional changes in the process.<sup>74</sup> It is nonetheless still unclear how much the Advisory Council will actually contribute to reducing prison populations. Although the Council has sent hundreds of names to the parole board for consideration, the parole board has been slow in setting up hearings.<sup>75</sup> Given that the Michigan prison population tends to be older than is typical due to the high number of lifers still in the system, this program could potentially have a significant effect on reducing the population.

### **C. A Final Caveat**

One final point needs to be made clear. While Michigan's previous incarceration policies were a major factor in creating systemic failures in medical and mental health care in the prisons, reducing population levels will not automatically cure that failure. Indeed, nothing about the current financial crisis offers grounds for optimism that Michigan will address the current lack of necessary medical care within its prisons. This remains a crisis that Michigan must solve.<sup>76</sup>

## VII. LESSONS FROM MICHIGAN'S EXPERIENCE

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The history of over-incarceration in Michigan illustrates why the fact that over-incarceration results from deliberate policy choices about punishment rather than directly from crime rates is actually good news. As a persuasive body of evidence demonstrates, with an effective criminal justice policy, public safety can be improved, crime rates lowered, and our massive over-incarceration reduced. There are a variety of points within the criminal justice system in which intervention is possible to reduce incarceration rates, and in many states those critical junctures will not be the same as those in Michigan. Legislative interventions can affect statutory penalties for crimes by eliminating criminal penalties for victimless crimes; reducing maximum sentence length; changing the availability of parole or probation or the circumstances under which parole or probation is revoked; providing “good time” sentence reductions; establishing specific forms of pre-sentencing diversion; or eliminating mandatory sentences.<sup>77</sup>

Many more actors, however, have roles that can reduce or increase total incarceration, including police arrest policies and practices, court practices regarding release of suspects pending trial, and judges’ practices with regard to imposition of probation as well as sentencing. In addition, in systems that provide for a system of release on parole, parole board practices often play a determinative role in the length of incarceration.<sup>78</sup> Further, in many state systems, a major driver of over-incarceration is the practice of revoking parole, and returning an offender to prison, for an act that is not in itself criminal, such as missing an appointment with a parole officer, or violating some other condition of parole.<sup>79</sup> Thus, while generally the most high-profile decisions about sentencing length are made by the legislature, and at times by judges in individual cases, there are many other points in the system that often are much more important in determining the length of time that is actually served for a particular criminal conviction.

Accordingly, while Michigan’s reforms were designed to work based on the state’s use of the parole board to release offenders, these programs are not a blueprint for states that impose fixed sentences without the possibility of parole. Nonetheless, Michigan’s experience is important because it demonstrates that common sense can in fact beat demagoguery and that smart-on-crime policies can actually triumph.

## CONCLUSION

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On November 5, 2009, the U.S. Senate passed the renewal legislation for the Second Chance Act, with funding for national initiatives on prisoner re-entry. Its passage demonstrates a belated acknowledgment of the grievous harms that mass incarceration entails. Efforts like the Second Chance Act that promote successful prisoner re-entry into the community, however, can only mitigate the harms from mass incarceration. Far more effective would be a national commitment to end mass incarceration.

It is obviously preferable to end mass incarceration by developing front-end diversion of offenders, before they go to prison, than to try to address the problem by speeding releases as Michigan has done. Front-end diversion by itself, however, cannot effectively address the huge numbers of men, women and children currently locked up. Because we also need measures to slash the numbers of persons currently imprisoned, the Michigan initiatives deserve consideration. These initiatives represent another sign that mass incarceration may finally be imploding, collapsing under its own weight as the global financial crisis renders it unsustainable, and Michigan inspires hope as a concrete example of the change in incarceration policies that the United States so desperately needs.

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