



A New Paradigm for Sentencing in the United States

Vera INSTITUTE OF JUSTICE

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February
2023

Chapter 2: The Facts about Sentencing and Safety

To reduce our use of incarceration, we have to reexamine the foundational rationales for sentencing against the evidence and traditional assumptions about what sentencing should accomplish.⁹⁵ The history of sentencing shows that these rationales have at times been laced and applied with racism. They also do not stand up to the facts. Deterrence theory assumes that harsh sentences meted out to people convicted of a crime keep society safe overall by influencing them and others to think twice before engaging in unlawful behavior, whereas retribution, or “just deserts,” is premised on the notion that punishment supposedly restores the moral balance that is disrupted by a criminal act and delivers some semblance of satisfaction and resolution to the person harmed by that crime.⁹⁶ Using rehabilitation to justify incarceration assumes that treatment, personal growth, skill building, and the like cannot occur in the community. And incapacitation as currently practiced paints with a broad brush, assuming that many people, particularly those who are convicted for violent crimes, need to be in prison because they will commit similar crimes in short order. It is time to put these justifications to the proof. What does the evidence say when it comes to harsh punishment and long prison sentences? And what does it say about alternative forms of sentencing that take place in the community?

Who impacts sentencing? The roles of the legislature, prosecutor, sentencing commission, and court

A variety of state actors create sentencing regimes.

- › The **legislature** sets the type (restitution, community service, carceral, etc.) and lengths of possible sentences that follow a conviction for each charge, both carceral and community-based.^a
- › **Prosecutors** determine which charges to pursue against a person accused of unlawful behavior and thus control the parameters of the sentence a person will face if convicted.^b
- › Eighteen states plus the federal government set sentences based on sentencing guidelines created by a **sentencing commission** appointed by various state actors, including governors, legislative leaders, and the heads of the judiciary.^c Guidelines are supposed to create uniformity and rationality—tying sentence length closely to factors such as crime severity—and remove sentencing decision-making from “political” actors such as legislatures and judges.^d These commissions are legislatively created, however, so even in these states, the power to set sentences flows from state legislatures, and the decision to use or not use sentencing guidelines can be altered by legislative or judicial action.
- › Finally, **courts** impose the actual sentence on the person before them who has been convicted of a crime. Sometimes, courts have wide discretion on what sentences to set, even within the ranges established by a legislature. Other times, courts have little discretion and must apply rigid sentencing guidelines that factor in such characteristics as the person’s prior conviction history.^e

- a For an example of how legislative bodies weigh policy and practical decision-making in designing sentencing schemes, see Amanda Essex, *Reducing Spending, Preserving Public Safety in Criminal Justice Budgets* (Washington, DC: National Conference of State Legislatures, 2021), <https://perma.cc/V5BY-6Z9C>.
- b For prosecutorial decision points, see Jamila Hodge and Kelsey Reid, “7 Critical Decision Points,” in *Unlocking the Black Box of Prosecution* (New York: Vera Institute of Justice, 2021), <https://perma.cc/AZ29-G4EY>.
- c Robina Institute of Criminal Law at the University of Minnesota Law School, “What Are Sentencing Guidelines?” Sentencing Guidelines Resource Center, March 21, 2018, <https://perma.cc/M3JC-5DAT>.
- d Richard Frase, “Why Have U.S. State and Federal Jurisdictions Enacted Sentencing Guidelines?” Robina Institute of Criminal Law and Criminal Justice, March 25, 2015, <https://perma.cc/8KED-76BX>.
- e See for example U.S. Department of Justice, “Sentencing,” <https://perma.cc/QSE5-KAJ6>.

Fact 1: More severe sentences do not deter crime

The concept of deterrence seems intuitive: if punishments are more severe, people will stop committing crimes because the consequences are so dire. Deterrence theory was part of the rationale for lengthening and increasing the surety of sentences to incarceration through the expansion of mandatory minimums in the 1980s and 1990s.⁹⁷ Study after study, though, has shown that people do not order their unlawful behavior around the *harshness* of sentences they may face, but around their perceived likelihood of being caught and facing *any* sentence.⁹⁸ First, the general public’s knowledge of, or even an individual’s familiarity with, the specific criminal sanctions set by legislatures is often limited at best.⁹⁹ Second, most people are deterred from engaging in unlawful behavior not because they fear a particular sanction but simply because they know the behavior is prohibited.¹⁰⁰ A 2013 meta-analysis of studies on deterrence concluded that “it is clear that lengthy prison sentences cannot be justified on a deterrence-based, crime-prevention basis.”¹⁰¹

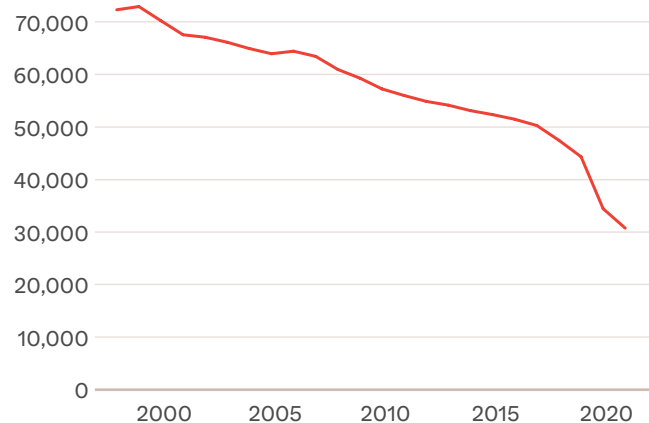
Fact 2: Rising incarceration from the 1970s to the 2000s was at best marginally responsible for the crime drop that began in the 1990s

Homicide rates have been falling across Australia, Canada, the United States, and the countries of western Europe for the last 50 years, without apparent correlation to their varying incarceration rates.¹⁰² (The United States, for example, leads in both the percentage of people who receive carceral sentences and the lengths of those sentences.¹⁰³) But if the type of sentencing scheme has no discernable effect on crime rates, what does? Some scholars have attributed the steady decline in lethal violence globally to increased self-control associated with industrialization, urbanization, modernization, and bureaucratization across the world.¹⁰⁴ Since the 1990s in the United States, rates for *all* violent crimes, including homicide and nonlethal violence, have dropped by about half—from 758 crimes per 100,000 in 1991 to 380 in 2019, with an uptick to 398.5 in 2020, corresponding in time to the COVID-19 pandemic and its fallout. (See “How should we interpret crime rates?” on page 25.¹⁰⁵)

In 2014, the National Research Council, in a seminal study, analyzed the large body of research on the connection between incarceration and crime in the United States from the 1970s through 2000 and concluded that although there was evidence that crime probably dropped somewhat due to the incapacitation of incarcerated people during this period, the “magnitude of the crime reduction remains highly uncertain and the evidence suggests it was unlikely to have been large.”¹⁰⁶ A closer look at the data suggests that although increased incarceration likely had some effect on driving down property crime rates during the last decade of the 20th century, by the turn of this century, rising incarceration rates and longer sentences had failed to deliver any additional benefit to public safety. For example, researchers at the Brennan Center for Justice concluded that in the 1990s, increased incarceration may have resulted in bringing down property crime by anywhere from 0 to 12 percent, landing on a conservative estimate of 6 percent.¹⁰⁷ However, as crime rates continued to drop, by the 2000s, increased incarceration accounted for less than 1 percent of the decline in property crime.¹⁰⁸ Brennan Center researchers also found that increased incarceration was not the driving factor for the significant drop in violent crime that began in the 1990s and continued through the 2000s.¹⁰⁹

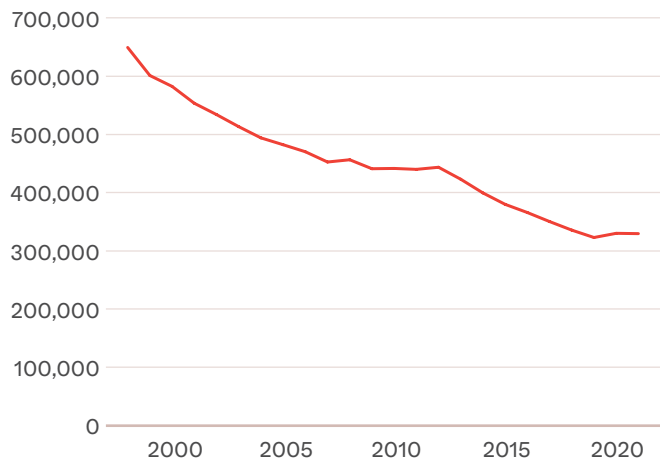
Why does incarceration have as little impact as it does on crime rates? There are two prevailing theories. One, already discussed, is that longer sentences do not necessarily work better than short ones to prevent people from engaging in unlawful behavior. The second is “replacement theory,” which posits that when people who commit relatively low-level crimes—such as drug use and sales, theft, and so-called quality-of-life offenses—are removed from the streets, others move in to take their place.¹¹⁰ We see evidence of these phenomena across the United States, where there is no discernable relationship between incarceration rates and crime rates: cities with high incarceration rates do not have lower crime rates than cities with low incarceration rates.¹¹¹

FIGURE 1A
New York prison population (1998–2021)



Source: Bureau of Justice Statistics, National Prisoner Statistics Program (1998–2002); and New York State Corrections and Community Supervision, *DOCCS Monthly Fact Sheet*, September 1, 2022 (2003–2021).

FIGURE 1B
New York State index crimes (1998–2021)



Source: New York State Division of Criminal Justice Services, *Index Crimes by County and Agency: Beginning 1990*, accessed via data.ny.gov.

How should we interpret crime rates?

Within the overall downward trend of violent and property crime, crime rates still varied from year to year from the 1990s to the 2000s. No one theory can definitively explain why. Some researchers have found significant correlations between crime rates and the declining numbers of adolescents and young adults, as people aged 15 to 30 more often engage in criminalized behavior than older adults.^a Others have attributed the decline in crime rates to decreased alcohol consumption and growth in average incomes across families.^b Other factors believed to influence the fluctuation in crime rates include demographic changes, economic changes, the introduction of new drugs (crack cocaine or opioids, for example), and the availability of guns.^c Although the social science research varies on this vast subject, the takeaway is that there is no one explanation or driver for what either causes or prevents crime, crime rates are often cyclical, and correlations are not the same as causation.^d

Indeed, best practice in interpreting variations in violent crime data posits that one or two annual upticks in crime does not make a new trend. It is normal for crime rates to fluctuate from year to year, and attention is warranted only when violent crime is persistently high or in places where short-term changes are statistically significant, large in absolute terms, and unusual in the context of historical trends and normal fluctuations.^e For example, a rise in gun violence and homicides across several cities in 2015 had many leaders in law enforcement and government loudly calling for more “law and order.”^f The upticks in shootings and homicides in 2015 receded by the next year—returning to the same low rate of the preceding years, and even lower.^g We have seen this same call in 2020 and into 2021, with criminal justice measures like bail reform and parole reform being blamed for an uptick in shootings and homicides—even though localities big and small that have not passed reforms are experiencing the same trend.^h

Although the causes for the uptick in shootings and homicides in the pandemic years of 2020 and 2021 are still being examined, the multi-year COVID-19 pandemic, with its resultant loss of life; trauma; and profound disruption of the social bonds of jobs, schools, and communities, together with the huge increase in guns purchased in 2020, are contenders.ⁱ Indeed, the early data from the first six months of 2022 shows that homicides and shootings are dropping slightly from their 2021 rates.^j The history of the 2015 crime rate fluctuation, plus what is known of the multifaceted nature of crime rates, strongly suggests that attempting to address the upswing through punitive criminal legal policies would be futile at best and more likely actively harmful.

^a Lauren-Brooke Eisen, Oliver Roeder, and Julia Bowling, *What Caused the Crime Decline?* (New York: Brennan Center for Justice, 2016), 57, <https://perma.cc/KJ4V-VNRK>.

^b *Ibid.*, 49–51, 55.

^c Maggie Koerth and Amelia Thomson-DeVeaux, “Trump Doesn’t Know why Crime Rises and Falls. Neither Does Biden. Or Any Other Politician,” *FiveThirtyEight*, October 8, 2020, <https://fivethirtyeight.com/features/trump-doesnt-know-why-crime-rises-or-falls-neither-does-biden-or-any-other-politician/>.

^d *Ibid.*

^e Bruce Frederick, *Measuring Public Safety: Responsibly Interpreting Statistics on Violent Crime* (New York: Vera Institute of Justice, 2017), 1, <https://perma.cc/VUD6-XCCU>.

^f Timothy Williams and Monica Davey, “U.S. Murders Surged in 2015, F.B.I. Finds,” *New York Times*, September 26, 2016, <https://www.nytimes.com/2016/09/27/us/murder-crime-fbi.html>.

^g John Gramlich, “What the Data Says (and Doesn’t Say) about Crime in the United States,” Pew Research Center, November 20, 2020, <https://perma.cc/JPB5-MFJZ>.

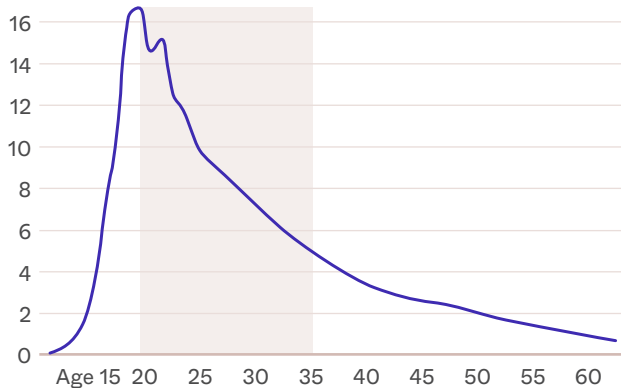
- h John Pfaff, “Can Criminal Justice Reform Survive a Wave of Violent Crime?,” *New Republic*, June 21, 2021, <https://newrepublic.com/article/162634/criminal-justice-reform-violent-crime>. For a detailed analysis contrasting the decline in robberies and burglaries in 2020 with the rise in murder and arguing that the pandemic is the causative factor for the difference, see John Roman, “The Spike in Homicide in 2020,” External Processing, September 27, 2021, <https://perma.cc/X53B-PRDQ>. For a comprehensive discussion of crime trends in 2020 to 2021 and comparison with higher rates in the 1990s, see Richard Rosenfeld and Ernesto Lopez, *Pandemic, Social Unrest, and Crime in U.S. Cities: June 2021 Update* (Washington, DC: Council on Criminal Justice, 2021), <https://perma.cc/W9JA-TGUU>. For a discussion about criminal legal reforms and the lack of relation to crime and crime and the pandemic, see Pfaff, “Can Criminal Justice Reform Survive a Wave of Violent Crime?,” 2021.
- i German Lopez, “2020’s Historic Surge in Murders, Explained,” *Vox*, March 25, 2021, <https://www.vox.com/22344713/murder-violent-crime-spike-surge-2020-covid-19-coronavirus>. See also Richard Rosenfeld, Thomas Abt, and Ernesto Lopez, *Pandemic, Social Unrest, and Crime in U.S. Cities: 2020 Year-End Update* (Washington, DC: Council on Criminal Justice, 2021), <https://perma.cc/4XMA-XKQF>; Julia P. Schleimer, Christopher D. McCort, Veronica A. Pear, et al., “Firearms Purchasing and Firearms Violence in the First Months of the Coronavirus Pandemic in the United States,” paper submitted to medRxiv July 10, 2020, <https://perma.cc/MJB6-7AN4>; and Champe Barton, “New Data Suggests a Connection between Pandemic Gun Sales and Increased Violence,” *The Trace*, December 8, 2021, <https://perma.cc/2KQ2-5Y9S>.
- j Richard Rosenfeld, Bobby Boxerman, and Ernesto Lopez, *Pandemic, Social Unrest and Crime in U.S. Cities: Midyear 2022 Update* (Washington, DC: Council on Criminal Justice, 2022), <https://perma.cc/STC3-8N9B>.

Fact 3: Young people “age out” of violent crime

Long prison sentences have been justified as an incapacitation strategy for people who have committed violent crimes based on the assumption that they are likely to continue to do so. But research shows that people “age out” of crime. Violent crime, measured by arrest rates, is much more prevalent among younger people from their late teens to early twenties.¹¹² The rate of arrest for such crimes begins to sharply decline after this point and is more than halved by the mid-thirties.¹¹³ This means that people who

FIGURE 2A
Murder arrest rate per 100K, by age (2010)

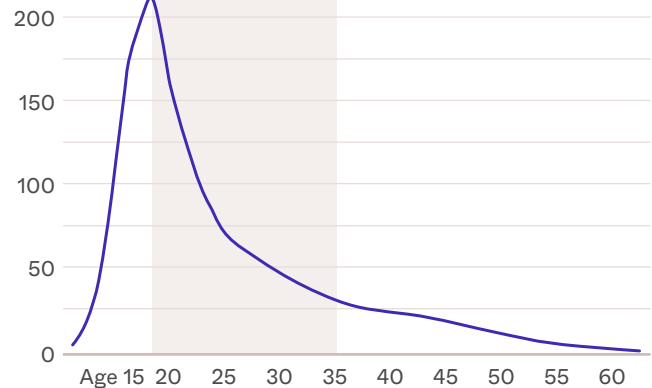
The rate of arrest for murder begins to sharply decline after the late teens and early twenties and is 65 percent lower by the mid-thirties.



Source: Howard N. Snyder, *Arrest in the United States, 1990–2010* (Washington, DC: Bureau of Justice Statistics, 2012), Figure 4, <https://perma.cc/54Y9-SF2W>.

FIGURE 2B
Robbery arrest rate per 100K, by age (2010)

The rate of arrest for robbery begins to sharply decline after the late teens and early twenties and is 80 percent lower by the mid-thirties.



Source: Howard N. Snyder, *Arrest in the United States, 1990–2010* (Washington, DC: Bureau of Justice Statistics, 2012), Figure 12, <https://perma.cc/54Y9-SF2W>.

commit crimes, even if they once presented a danger to others, may be safely released much before the end of the 20-, 30-, and 40-year or life sentences they are now serving and that these sentences should be made substantially shorter in the first instance. Additionally, a substantial body of research demonstrates that incarceration of any length is developmentally harmful for young people and contradicts safety, increasing the risk of future involvement with the criminal legal system rather than reducing crime.¹¹⁴

Case studies: Prison releases as a result of sentencing changes and administrative decisions that did not impact public safety

Several instances of declining prison populations and outright prison releases as a result of sentencing changes and administrative decisions show that making carceral sentences both rarer and shorter can be done commensurate with public safety. Although many of these examples are limited to drug and theft offenses—a reflection of limited political will to address sentencing reform for all convictions—they remain illustrative that reform predicated on less incarceration can in fact deliver more safety.

- › **California’s Proposition 47.** Due to its active adoption of “tough-on-crime” sentencing and parole violation policies, California’s prison population grew by 435 percent from 1983 to 2009, which led to severe overcrowding, unsanitary conditions, and inadequate in-prison programming, health care, and mental health treatment.^a After a series of federal lawsuits, the U.S. Supreme Court in 2011 ordered the state to reduce its prison population.^b The California legislature responded by passing “public safety realignment” laws, which shifted thousands of people convicted of low-level offenses from state prisons to local jails.^c

Despite realignment, the prison population did not drop to court-mandated levels until after voters passed Proposition 47 in 2014, which reclassified several property and drug offenses as misdemeanors and led to retroactively reduced sentences.^d Within three months, almost 9,000 people had been released from California jails and prisons; within one year, that became 13,000 people.^e The Black-to-white prison incarceration gap decreased as well, from about 4.5 percentage points to 2.8—a decrease of about 36 percent—from 2007 to 2017, and roughly half of this decline occurred after the state implemented Proposition 47.^f Evaluations of Proposition 47 have shown that it led to an immediate 15 percent decline in total drug arrests and a 20 percent decline in property crime arrests, as well as a reduction in racial disparities in arrest rates.^g Analyses of Proposition 47 and crime rates in California have found that the proposition’s passage was not associated with a change in violent crime rates, although larceny theft increased modestly following passage.^h Proposition 47 also reduced recidivism: two-year rearrest and reconviction rates were significantly lower for people released after serving sentences for Proposition 47 offenses compared to their pre-reform counterparts.ⁱ

- › **Federal releases due to changes in crack cocaine sentencing.** In 2011, more than 7,000 people serving federal prison sentences for manufacturing or trafficking in crack cocaine were released 30 months “early”—after serving an average of 10.25 years—when Congress changed mandatory minimums for these offenses, and the Federal Sentencing Commission made these changes retroactive.^j In 2018, researchers studied more than 7,800 people and compared recidivism rates of those who had been released under the new guidelines to those who had served their full sentences—12.75 years on average—before the change in law.^k They found no

meaningful difference in recidivism between the two groups after three years; the groups had an identical 37 percent recidivism rate measured by conviction for a new offense, a supervision violation, or an arrest that hadn't yet been resolved.^l

- › **New York's Rockefeller Drug Law Reform.** New York State passed the Rockefeller Drug Laws in 1973, which mandated extremely long carceral sentences for a wide range of drug offenses, such as 15 years to life for possession of four ounces of narcotics—or “about the same as a sentence for second-degree murder.”^m In 2009, the New York State Legislature passed full repeal of the law and replaced it with a different statutory structure.ⁿ This sentencing reform permitted drug treatment and alternative-to-prison programs instead of prison sentences and set shorter sentence lengths for those still permitted to be imprisoned for felony drug convictions.^o An impact study of these reforms found that in the nine months prior to Rockefeller Drug Law repeal, Black and Latino people were three times more likely than white people to receive a prison sentence following a felony drug arrest.^p After the drug law reforms, they were twice as likely as white people to go to prison—a 33 percent reduction in a disparity that researchers concluded could not be explained by factors other than race.^q Diversion increased from 15 percent to 21 percent of cases, and the use of prison sentences decreased from 29 percent to 19 percent of cases.^r A follow-up on both sample groups showed that those sentenced to diversion after the reforms had 43 percent fewer rearrests than those sentenced to incarceration.^s
- › **Illinois releases due to overcrowding.** From 1980 to 1983, Illinois corrections officials released 21,000 incarcerated people—or 10 percent of the prison population—to alleviate the state's severe prison overcrowding, brought about in part by a huge increase in prosecutorial staffing and the state's move from indeterminate to determinate sentencing.^t The people released were convicted of a wide range of crimes, from theft to murder; the biggest categories were burglary (26 percent) and armed robbery (15 percent).^u The average sentence reduction per person was about 105 days, or 12 percent.^v Researchers found that people released early did not have a higher probability of being arrested or returned to prison compared to people released after serving their full terms.^w For the people released early who did go on to commit crimes, these accounted for less than 1 percent (4,500 arrests) of all recorded arrests for the three-year period covering their releases.^x

* Box notes at end of report.

Fact 4: Incarceration breeds disruption and trauma that make communities less safe

Removing large numbers of people, mostly men, from their communities and warehousing them in prison for years at a time creates more harm than good. First, the loss of so many men in the prime of their lives destabilizes the neighborhoods they leave behind.¹¹⁵ Families lose providers, children lose parents, and people lose current and potential intimate partners.¹¹⁶ Not only does the loss of these primary relationships cause trauma, but employers also lose employees, churches lose members, and neighborhood groups lose contributors. After a critical mass of people are removed, crime may go up as a result of frayed community ties and the loss of informal social control that parents, siblings, grandparents, and loved ones provide.¹¹⁷

Second, prison itself can be a crime-creating environment. A 2021 meta-analysis of 116 studies found that custodial sentences not only do not prevent reoffending, but they can also actually increase it.¹¹⁸ In order to have the closest possible comparison between people sentenced to incarceration and those given alternative sentences, these types of studies use statistical modeling to control for factors such as age, gender, type and severity of charge for the current conviction, and prior conviction history.¹¹⁹ As data from the fallout of mass incarceration has accumulated, researchers have increasingly concluded that incarceration itself can be “criminogenic”—that the prison environment, separation from community, or even the process of returning to the community is so destabilizing that it increases the likelihood of continued encounters with the criminal legal system.¹²⁰

Fact 5: States overincarcerate people convicted of violent offenses with no measurable returns on public safety

Increases in the number and length of prison and jail sentences have not produced more public safety, simply because most incarcerated people are not a danger to the community. A tiny fraction of people commit the majority of violent crimes in the United States—according to the data, 1 to 5 percent of people engaged in unlawful behavior commit 50 to 75 percent of all violent crimes.¹²¹ Sentences to jail and prison for incapacitation should be reserved for that small sliver of people who have repeatedly seriously harmed others. (Chapter 6 on page 49 suggests legislative options for burden of proof and fact finding around this question at the time of sentencing.¹²²) Aside from this small group, there is little evidence that people who are convicted of a violent crime actually “specialize” in violence.¹²³ For most violent acts, although the violence creates real harm and needs to be repaired, it does not create an ongoing safety crisis that must be addressed with ever-increasing amounts of incarceration. Indeed, people age out of engaging in violent crime at earlier ages—with peak arrests occurring from ages 18 to 20 and falling steeply thereafter—than they do with drug and property crimes, for which people are much more likely to engage in repeat behavior.¹²⁴ Sentencing a person who engages in an act of violence compelled by moments of conflict or a specific circumstance to a lengthy term of incarceration does not further public safety because such behavior is not endemic to that person, it is a result of that circumstance and is unlikely to recur.¹²⁵

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Fact 6: Community-based sentences increase public safety, even for offenses involving violence

Community-based sentences have a track record of delivering behavioral change and more community safety, even though they have been sorely underutilized in this country.¹²⁶ Many rehabilitative programming innovations of the last 30 years, including cognitive behavioral programming and restorative justice, were pioneered in the community.¹²⁷

These include well-known restorative justice programs—those that are explicitly concerned with repairing harm and restoring social relationships—like Common Justice in New York City and Impact Justice’s youth-based interventions in several cities in California, as well as smaller community-based programs like S.O.U.L. Sisters in New York City and Miami and Collective Justice in Washington State that developed organically in response to a particular community’s need for alternatives to the traditional criminal legal system.¹²⁸

A 2019 meta-analysis of 35 U.S. community-based restorative justice programs using a variety of processes found that restorative program participants were 41.5 percent less likely to be rearrested than people who had been prosecuted and sentenced in the traditional criminal legal system.¹²⁹ (See “Community-based and correctional programming that helps to repair harm” in the text box below.) A 2013 meta-analysis of 10 programs from three countries (Australia, the United Kingdom, and one program in the United States) using face-to-face restorative justice conferencing as an alternative to regular court processing found that people who took part in the conferences reduced their frequency of new contact with the criminal legal system compared to the control group.¹³⁰ These harm-reducing effects from restorative practices held in the community were, contrary to the practice of reserving restorative justice for lesser offenses, more consistent when people had committed serious or repeat offenses.¹³¹

Engaging in this kind of transformation and repair in the community is central to the program’s impact on both the person who committed harm and the person harmed. After all, the community is where the transgression, violence, or harm took place. The point of repair is to acknowledge harm and visibly give back to the harmed party and the community and restore a sense of fairness and safety.¹³² A person may feel sorry for or ashamed of what they have done and reorder their behavior with the help of programming and interventions, but if this transformation is not visible to the harmed people, they miss out on the benefit of seeing those efforts as part of their own healing.¹³³

Community-based and correctional programming that helps to repair harm

- › **Restorative justice programs** focus on repairing harm and restoring social relationships by participants acknowledging their actions and making amends in some way, even when direct contact with the crime survivor and/or their family may not be possible.^a Types of restorative justice include mediation; peacemaking or sentencing circles in which the harmed and responsible parties meet together with other members of the community to develop a response to harm that restores relationships; and restorative conferencing in which stakeholders, including the harmed party, the responsible party, family members, and a facilitator, negotiate the responsible party’s obligations to repair the harm done.^b
- › **Community service sentences** require the person to engage in repair by giving back or doing something that contributes to community improvement. The community service itself—whether

cleaning up a park, working at a community center, or some other act of public service—is done openly so that the community sees the person’s efforts. Jurisdictions in the United States tend to use this option for low-level offenses only, such as violations (offenses such as disorderly conduct that are categorized beneath misdemeanors in severity) and some misdemeanors.^c Other countries with lower incarceration rates use community service at a much higher rate and for more serious offenses.^d The United States’s lesser use of community service is a missed opportunity for public accountability in a greater range of cases. Community service could be reconceived in this country to move beyond picking up trash or painting walls to include actions tied much more closely to the needs of the community—as determined by the community—and linked to the skills and strengths of the person doing the service so that the work creates meaningful opportunities for growth. As so conceived, community service should be required for people of all income levels—so that it cannot be skipped by people who could pay a fine instead—and be flexible enough so that it can be completed around people’s work, childcare, and other obligations, so that missing community service doesn’t become a back door to a jail or prison sentence if a person misses an inflexible obligation.^e

- › **Treatment programs** are used to address underlying issues when violent or harmful actions are a result of trauma, harmful thinking patterns, unmanaged anger, and underdeveloped problem-solving skills. Examples of such programming include group-based cognitive behavioral therapy, which emphasizes changing decision-making, problem-solving, and unrealistic or problematic thinking; as well as alternatives-to-violence programming, which teaches ways to handle stress and potentially dangerous situations through a combination of personal regulation techniques, problem-solving, empathy, and connection.^f People whose crimes are related to substance use benefit from treatment, including medication-assisted therapy where indicated, which includes the use of anti-craving drugs such as buprenorphine along with counseling and behavioral therapies, especially for opiate dependency.^g

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- a Restorative justice programs, which are explicitly concerned with repairing harm and restoring social relationships, are one way of centering the survivor’s harm and requiring the responsible party to address it. sujatha baliga, “A Different Path for Confronting Sexual Assault,” *Vox*, October 10, 2018, <https://perma.cc/ZEL7-8QWN>.
 - b For an example of how this process can work in the context of the community and criminal legal system, see Impact Justice, “Diversion,” <https://perma.cc/QN7U-75E3>.
 - c NY Penal Code § 240.20 (disorderly conduct classified as a violation); and Sarah Picard, Jennifer A. Tallon, Michela Lowry, and Dana Kralstein, *Court-Ordered Community Service: A National Perspective* (New York: Center for Court Innovation, 2019), 10, <https://perma.cc/TFV4-AKPK>.
 - d Community service is required in 41 percent of community-based sentences in European countries and in 35 percent of suspended sentences. Marcelo F. Aebi, Galma Akdeniz, Gordon Barclay, et al., *European Sourcebook of Crime and Criminal Justice Statistics 2014 (5th ed.)* (Helsinki, Finland: European Institute for Crime Prevention and Control, 2017), 196, Table 3.2.3.1, <https://perma.cc/CN5X-KWX9>.
 - e Lucero Herrera, Tia Koonse, Melanie Sonsteng-Person, et al., *Work, Pay, or Go to Jail: Court-Ordered Community Service in Los Angeles* (Los Angeles: UCLA Labor Center and UCLA School of Law, 2019), <https://perma.cc/L5TQ-7SU4>.
 - f For cognitive behavioral therapy, see Development Services Group, Inc., *Cognitive-Behavioral Treatment* (Washington, DC: Office of Juvenile Justice and Delinquency Prevention, 2010), <https://perma.cc/F8Y3-R5XS>. A cost-based meta-analysis of correctional interventions and crime prepared in 2013 by the Washington State Institute for Public Policy (WSIPP) demonstrated that cognitive behavioral treatments have significant benefits and potential. Steve Aos and Elizabeth Drake, *Prison, Police, and Programs: Evidence-Based Options that Reduce Crime and Save Money* (Olympia, WA: WSIPP, 2013), 5, <https://perma.cc/9GQX-44X9>.

Regarding alternatives-to-violence programs, see Marsha L. Miller and John A. Shuford, *The Alternatives to Violence Project in Delaware: A Three-Year Cumulative Recidivism Study* (Wilmington, DE: New Hampshire Charitable Foundation, 2005), <https://perma.cc/C7H6-LVGH>; and James McGuire, “A Review of Effective Interventions for Reducing Aggression and Violence,” *Philosophical Transactions of the Royal Society B* 363, no. 1503 (2008), 2577–2597 (focusing on interventions for justice-involved participants and finding, after reviewing 11 meta-analyses for system-involved people who had been convicted of violent acts, “there are numerous positive outcomes. These permit reasonable confidence in the broad conclusion that it is possible to reduce violent recidivism by systematic and carefully designed intervention.”), <https://perma.cc/PG3H-H858>.

g For programs targeting substance use disorders generally, see National Institute on Drug Abuse, *Principles of Drug Abuse Treatment for Criminal Justice Populations: A Research-Based Guide* (Washington, DC: U.S. Department of Health and Human Services, 2012), 17, <https://perma.cc/3TSR-XAMB>. For medication-assisted treatment specifically, see Kelly E. Moore, Walter Roberts, Holly H. Reid, et al., “Effectiveness of Medication Assisted Treatment for Opioid Use in Prison and Jail Settings: A Meta-Analysis and Systematic Review,” *Journal of Substance Abuse Treatment* 99 (2019), 32–43, <https://perma.cc/F8KF-SXDE>.

Fact 7: Survivors of crime prefer prevention, healing, and repair to harsh punishments

The criminal legal system often predicates its harsh responses to a finding of wrongdoing by saying that this is what survivors of crime want. But most crime isn’t processed through the criminal legal system—60 percent of violent crimes and 66 percent of property crimes are not reported to police—and lawmakers and other public servants who represent communities need to look at other sources, such as surveys of survivors of crime, to understand what they experience and what they want.¹³⁴ And in fact, by a margin of nearly 2:1, crime survivors surveyed in 2022 preferred that the criminal legal system focus more on rehabilitation than punishment.¹³⁵

The Bureau of Justice Statistics has collected information annually since 1973 through its National Crime Victimization Survey to better understand the patterns of victimization even when a crime is not reported to police, and in 2016 and 2022, the Alliance for Safety and Justice commissioned two national surveys of victims’ views.¹³⁶ More than three-quarters of people surveyed by the Alliance in 2022 received no outside help such as counseling, economic assistance, or victim compensation after the incident, and only 20 percent received assistance from the criminal legal system.¹³⁷ Although victim services are more readily available for certain categories of crime, such as intimate partner violence—one of the most common forms of violent crime—even for intimate partner violence, only 26 percent of people in 2019 received services.¹³⁸ Research also shows that crime survivors—regardless of race and age—suffer trauma.¹³⁹ In fact, more than two-thirds of survivors of “serious violence” experience socio-emotional problems.¹⁴⁰ This trauma is often used to justify harsh, punitive sentences, but by a nearly 2:1 margin, the survivors surveyed preferred rehabilitative sentencing, 6 in 10 preferred shorter sentences to long ones, and by a 3:1 margin, they preferred holding people accountable through options beyond just prison, such as drug and mental health treatment and restorative justice.¹⁴¹ These numbers reflect a serious disconnect between the desires of many crime survivors and the goals of the

traditional criminal legal process.

In contrast, crime survivors who engage in a reparative experience, such as face-to-face facilitated conferencing as part of a restorative justice process with the person who harmed them, report a greater sense of safety for themselves as well as for others.¹⁴² Restorative conference participants, including those who survived violence, report feeling more satisfied at the end of that process than people who participate in traditional court processing and sentencing.¹⁴³

Fines as a community-based sentencing option

In Europe and Latin America, fines are a very common, stand-alone sanction, unlike in the United States, where they often accompany a custodial sentence (except for very low-level offenses like traffic violations).^a Fines enable the state to issue a sanction for unlawful behavior without the expense of community programming or supervision and, in the United States, often serve as a source of revenue for the criminal legal system and the government's general coffers.^b Although this provides an incentive for legislators and judges to set fines, it also encourages the fines set to be significant.^c If the United States were to center fines as an alternative sentencing option, it must look to the ways other countries have attempted to make these fines equitable.

To address the burden that fines present for people with low incomes, so-called day fines are calibrated to both the seriousness of the offense and a person's ability to pay.^d To follow through on the promise of day fines, judges must be given clear standards about what constitutes indigence. Otherwise, as has happened in Germany, judges may not be able to conceive of just how difficult it is for people to pay even very low fees and continue to set fines that are unfairly burdensome.^e

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- a** Ram Subramanian and Alison Shames, *Sentencing and Prison Practices in Germany and the Netherlands: Implications for the United States* (New York: Vera Institute of Justice, 2013), 8, <https://perma.cc/C224-YVDD>; Tapio Lappi-Seppälä, "Nordic Sentencing," *Crime and Justice* 45, no. 1 (2016), 17–82, 41; and Edwin Zedlewski, *Alternatives to Custodial Supervision: The Day Fine* (Washington, DC: National Institute of Justice, 2010), <https://perma.cc/N8CW-5KTA>.
 - b** Alexes Harris, Beth Huebner, Karin Martin, et al., *Monetary Sanctions in the Criminal Justice System* (New York: Laura and John Arnold Foundation, 2017), 5, <https://perma.cc/B545-4EYD>.
 - c** See for example Mike Maciag, "Addicted to Fines," *Governing*, August 19, 2019, <https://www.governing.com/archive/gov-addicted-to-fines.html>.
 - d** Zedlewski, *Alternatives to Custodial Supervision*, 2010.
 - e** Mitali Nagrecha, *The Limits of Fairer Fines: Lessons from Germany* (Cambridge, MA: Harvard Law School, 2020), 8–9, <https://perma.cc/9RAK-RCJV>.