



# Policy Recommendations for Meeting the Grand Challenge to Promote Smart Decarceration

Forty years of mass incarceration have resulted in a bloated criminal justice system that levels damaging effects on some of the most vulnerable and oppressed individuals, families, and communities in the United States. The unprecedented American phenomenon of mass incarceration has been fueled by an array of incoherent policies that, despite stated goals, have not fostered public safety or public well-being.<sup>1</sup> What lies before us is a historic opportunity to promote smart decarceration by building social capacity to reduce incarceration rates in ways that are effective, sustainable, and socially just. To succeed, smart decarceration requires policy innovations that substantially reduce the use of incarceration, redress existing disparities in the criminal justice system, and maximize public safety and well-being.

## **Recommendation 1:**

### **Use Incarceration Primarily for Incapacitation of the Most Dangerous**

Evidence indicates that incarceration is not effective at achieving public safety through rehabilitation or deterrence but that it is most effective at *incapacitation*, or removing dangerous individuals from society.<sup>2</sup> However, the majority of currently incarcerated individuals are not immediate threats to public safety; rather, they are incarcerated as a default response to their undesirable behaviors.<sup>3</sup> Criminal justice policies should reflect the evidence and utilize incarceration primarily when an individual poses such a threat to public safety that community-based options cannot be considered as a first course. This approach can be supported by sentencing policies that, rather than setting a mandatory minimum, are responsive to an individual's needs and level of risk to public safety. Legislation must articulate the types of charges for which incarceration simply should not even be an option. Bail reform efforts can help to ensure that people do not spend unnecessary time behind bars simply because they cannot afford to pay. Policies should also seek to identify and facilitate effective exit points along various stages of the criminal justice continuum. Examples of these exit points include law-enforcement-assisted diversion, deferred prosecution programs, problem-solving courts, effective reentry programming, and responsive community-supervision strategies.

## **Recommendation 2:**

### **Make Reduction of Disparities a Key Outcome in Decarceration Efforts**

The uneven effects of mass incarceration on people of color, people in poverty, and people with substance use and mental health disorders have been documented for years.<sup>4</sup> There

must be an intentional effort to assess whether and how emerging decarceration policies improve or exacerbate these disparities. Reductions in racial, class, and behavioral-health disparities should be reconceptualized as key outcomes in smart decarceration policies. Decarceration efforts by federal, state, and local governments should include a commitment to develop innovations that actively target the reduction of racial, economic, and behavioral-health disparities. Legislation and policies that mandate racial impact statements and articulate racial equity goals are two strategies that could be used by state and local governments to assure that reducing disparities is a focal point of decarceration work.<sup>5</sup>

## **Recommendation 3:**

### **Remove Civic and Legal Exclusions**

Coinciding with the era of mass incarceration has been the proliferation of civil disability policies, also known as collateral consequences policies, which revoke or restrict legal rights and privileges because of a criminal conviction. Examples include ineligibility for housing assistance, student loans, professional licensure, and employment, as well as denial of voting and parental rights. There are now an estimated 40,000 such laws nationwide.<sup>6</sup> This patchwork of policies severely limits the rights and daily behaviors of people with criminal convictions. Many civil disability policies stand in direct tension with rehabilitative aims such as educational attainment, employment, social support, and reunification with family. As decarceration efforts proceed, it is imperative to investigate how to align public policies and rehabilitative practices to support reforms and ensure that people with criminal convictions have the greatest possible chance of success. Civil disability policies that do not directly advance public safety and well-being should be revoked or curtailed to eliminate their counterproductive effects.

## **Recommendation 4:**

### **Reallocate Resources to Community-Based Supports**

The United States spends over \$52 billion annually on incarceration despite evidence that mass incarceration's positive effects on public safety have been minimal.<sup>7</sup> Although hopes to reduce state and local spending may drive some motivations to reduce incarceration rates, decarceration should not be viewed primarily as a revenue building measure. Instead, decarceration efforts must be accompanied by a concurrent commitment to reinvest the savings from lessened incarceration on programs aimed at reducing crime and recidivism. Justice reinvestment initiatives have shown some promise in providing public safety approaches that are more cost effective than incarceration. However, policies must go

beyond reinvesting in the formal criminal justice system and move toward reallocating resources to build the social capacity of communities most affected by incarceration.<sup>8</sup> A sustainable approach to decarceration calls for investment in behavioral health services, public education, economic infrastructure, and other forms of community supports. Such an approach would strengthen community vitality and provide a range of opportunities for communities to prevent and respond to neighborhood crime.

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## End Notes

1. Epperson and Pettus-Davis (2015).
2. Travis, Western, and Redburn (2014).
3. Snyder (2012).
4. Pettus-Davis and Epperson (2015).
5. Mauer (2011).
6. Laird (2013).
7. Durose, Cooper, and Snyder (2014).
8. Austin et al. (2013).

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