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## The Impact Of Incarceration On The Risk Of Violent Recidivism

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# THE IMPACT OF INCARCERATION ON THE RISK OF VIOLENT RECIDIVISM

JENNIFER E. COPP\*

*Whether incarceration heightens an individual's likelihood of recidivating is at the center of prison policy discussions. Yet rigorous empirical studies on the nature of the incarceration—recidivism link are limited. As a whole, existing research suggests that the effect of imprisonment, relative to non-custodial sanctions, is either null or slightly criminogenic. These findings call into question the ability of prisons to exert a specific deterrent effect. They also suggest that prisons are failing to address the underlying causes of recidivism among inmate populations. An important consideration, however, is the extent to which the effects of imprisonment are heterogeneous. The current discussion further unpacks the effect of prison by considering whether and how imprisonment influences the risk of violent recidivism. This Article reviews the different theoretical perspectives invoked to explain the association between incarceration and future violence, as well as the existing research evidence. This Article concludes with implications for theory, research, and policy.*

|  |     |
|--|-----|
| I. INTRODUCTION.....   | 776 |
| II. THEORIZING ON THE INCARCERATION–RECIDIVISM LINK.....                 | 778 |
| A. Specific Deterrence.....  | 779 |
| B. Social Experience.....  | 780 |
| III. PRIOR RESEARCH ON THE IMPACT OF INCARCERATION ON<br>RECIDIVISM..... | 781 |
| IV. INCARCERATION AND THE RISK OF VIOLENT RECIDIVISM.....                | 784 |
| V. CONCLUSIONS.....  | 787 |
| A. Implications for Theorizing and Research.....                         | 788 |
| B. Policy Implications.....  | 790 |

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## I. INTRODUCTION

Imprisonment is among the most severe punishments used in modern society, the primary goal of which is to prevent crime.<sup>1</sup> The ways in which imprisonment contributes to that goal are multifaceted. Imprisonment leads to incapacitation, as the physical isolation of offenders precludes their offending in the community. Incapacitation became a particularly popular argument for increasing the use of imprisonment beginning in the 1980s, and since that time, scholars have worked to provide estimates of individual crime-committing behavior to determine the number of crimes averted by removing an offender from the community.<sup>2</sup> Despite considerable debate regarding the extent to which incapacitation affects the overall crime rate, given the sheer size of the U.S. prison population, it is widely acknowledged that incapacitation has contributed to reductions in offending at some level.<sup>3</sup>

The threat of imprisonment is also thought to prevent crime by eliciting a behavioral response. This particular crime preventative effect is referred to as deterrence. Studies of deterrence assess the extent to which the threat of punishment in the population encourages people to obey the law.<sup>4</sup> The concept of deterrence predates the development of criminology as a field of empirical inquiry; however, over the last half century, scholars have attempted to quantify the deterrent effect of imprisonment.<sup>5</sup> Evidence of the general deterrent effect of incarceration suggests considerable heterogeneity and furthermore, demonstrates that the deterrent effect of the threat of imprisonment may be “context-specific.”<sup>6</sup> Accordingly, scholars suggest that the more appropriate frame of questioning includes whether a particular sanction deters and not whether deterrence works more generally. Nevertheless, with respect to

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1. Daniel S. Nagin, Francis T. Cullen, & Cheryl Lero Jonson, *Imprisonment and Reoffending*, 38 CRIME & JUST. 115, 115 (2009).

2. 1 CRIMINAL CAREERS AND “CAREER CRIMINALS” 6–7 (Alfred Blumstein, Jacqueline Cohen, Jeffrey A. Roth & Christy A. Visher eds., 1986); see FRANKLIN E. ZIMRING & GORDON HAWKINS, INCAPACITATION: PENAL CONFINEMENT & THE RESTRAINT OF CRIME 50 (1995).

3. See Alex R. Piquero & Alfred Blumstein, *Does Incapacitation Reduce Crime?*, 23 J. QUANTITATIVE CRIMINOLOGY 267, 267–68 (2007); William Spelman, *The Limited Importance of Prison Expansion*, in THE CRIME DROP IN AMERICA 97, 97 (Alfred Blumstein & Joel Wallman eds., rev. ed. 2006).

4. Daniel S. Nagin, *Deterrence in the Twenty-First Century*, in 42 CRIME AND JUSTICE IN AMERICA, 1975–2025, at 199, 200 (Michael Tonry ed., 2013).

5. DETERRENCE AND INCAPACITATION: ESTIMATING THE EFFECTS OF CRIMINAL SANCTIONS ON CRIME RATES 3–7 (Alfred Blumstein, Jacqueline Cohen, & Daniel Nagin eds., 1978).

6. Robert Apel & Daniel S. Nagin, *General Deterrence: A Review of Recent Evidence*, in CRIME AND PUBLIC POLICY 411, 411–30 (James Q. Wilson & Joan Petersilia eds., 2011).

imprisonment and related sentencing policy there is little evidence that further increases to our already lengthy prison sentences would deter crime in the general population.<sup>7</sup>

A third mechanism by which imprisonment may contribute to reductions in offending is “specific deterrence,” the notion that the *experience* of punishment itself discourages future offending.<sup>8</sup> Indeed, much of our expectation about the role of prisons in crime prevention is based on the understanding that prisons specifically deter; that is, that individuals who have experienced incarceration will be less likely to reoffend following their release—especially if their risk of reincarceration is high. Yet, in contrast to the research on incapacitation and general deterrence which suggests a role for these factors in crime prevention, scholars have argued that the prison experience may actually *increase* reoffending. These arguments are typically rooted in social experience theory, which posits that the prison environment increases inmates’ exposure to different criminogenic risks that increase their likelihood of reoffending upon release.<sup>9</sup>

A robust amount of research literature has sought to estimate the effects of incapacitation and deterrence.<sup>10</sup> However, a more limited body of work has considered the post-release outcomes of individuals who have served a prison sentence.<sup>11</sup> Accordingly, the goal of this Article is to describe the state of recidivism research and in particular, to review existing theoretical accounts and empirical findings regarding the impact of incarceration on recidivism. Given the very scant existing literature on incarceration’s impact on future violence, I use this as a foundation for understanding if and how a period of incarceration may contribute to violent recidivism among prison releasees. I conclude my discussion with a series of recommendations for theorizing, research, and policy.

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7. Steven N. Durlauf & Daniel S. Nagin, *Imprisonment and Crime: Can Both be Reduced?*, 10 CRIMINOLOGY & PUB. POL’Y 13, 14 (2011).

8. See Johannes Andenaes, *Does Punishment Deter Crime?*, 11 CRIM. L.Q. 76, 78 (1968); Gary S. Becker, *Crime and Punishment: An Economic Approach*, 76 J. POL. ECON. 169, 176–79 (1968).

9. Francis T. Cullen, Cheryl Lero Jonson, & Daniel S. Nagin, *Prisons Do Not Reduce Recidivism: The High Cost of Ignoring Science*, 91 PRISON J. 48S, 52S–53S (2011).

10. COMM. ON LAW AND JUSTICE, NAT’L ACAD. OF SCIS., *THE GROWTH OF INCARCERATION IN THE UNITED STATES: EXPLORING CAUSES AND CONSEQUENCES* 131 (Jeremy Travis, Bruce Western, & Steve Redburn eds., 2014).

11. *Id.* at 157–58, 193–95, 198.

## II. THEORIZING ON THE INCARCERATION–RECIDIVISM LINK

The question of whether or not imprisonment discourages future offending would appear to lie at the heart of any debate regarding sentencing policy. Looking back at the shift toward longer sentencing beginning in the early 1980s, it would stand to reason that these sentencing changes were informed by an empirically based understanding of the extent to which imprisonment influenced reoffending. For example, the core beliefs underlying sentencing reforms included the following: (1) punishments were too lenient, (2) lesser sanctions would be ineffective, and (3) mandatory prison sentences would deter those who were the targets of the reform.<sup>12</sup> In order to develop sentencing reforms on these bases, it would seem to follow that we had a solid understanding of the impact of imprisonment on recidivism relative to alternative sanctions and, moreover, that we had a specific understanding of how imprisonment influenced the likelihood of recidivism for the groups that were the target of these reforms—including violent offenders. Yet nearly four decades later, there is little consensus on the use of imprisonment as a crime prevention strategy.

In fact, there are two opposing arguments used to describe the link between incarceration and recidivism. The first, rooted in a deterrence framework, contends that prison represents a cost to offenders and that provided the cost of a prison spell outweighs the benefit of crime commission, individuals will be deterred from reoffending upon release from prison. This perspective is referred to as specific deterrence because it addresses the link between incarceration and the offending behaviors of those who experience the prison sanction firsthand. The second provides a social experiential approach which focuses on the broader experience of imprisonment and argues that a comprehensive assessment of prison's impact on released offenders cannot be summed up by a simple cost. Instead, proponents of this view suggest that the effects of incarceration must account for the broader social influence processes that shape individuals' attitudes, beliefs, and behaviors over the course of their imprisonment. In sum, whereas a specific deterrence approach suggests that incarceration reduces reoffending, a social experience approach suggests that incarceration increases reoffending. But what are the origins of these two opposing views, and which of the two has more empirical support?

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12. JAMES P. LYNCH & WILLIAM J. SABOL, DID GETTING TOUGH ON CRIME PAY?: CRIME POLICY REPORT NO. 1, at 2 (1997), <https://www.urban.org/sites/default/files/publication/70411/307337-Did-Getting-Tough-on-Crime-Pay-.pdf> [https://perma.cc/Q78S-Y3YE].

### A. Specific Deterrence

One of the rationales for sentencing reform was the idea that mandatory prison sentences would deter individuals from offending. This rationale is based on a rational choice approach to punishment (i.e., imprisonment is a cost to offending), which suggests that the certainty, severity, and swiftness of criminal sanctions would deter crime in the aggregate.<sup>13</sup> Although deterrence scholars have focused most empirical attention on the concept of general deterrence, a key element of the deterrence doctrine is that individuals will be deterred from future offending by their direct experiences with punishment.<sup>14</sup>

Some scholars have criticized the distinction between general and specific deterrence, noting that the practice of separating out effects on the basis of populations is misleading, as offenders may also be deterred by their own indirect experiences with punishment or punishment avoidance.<sup>15</sup> Others argue that the somewhat singular focus on incarceration to understand the crime-inhibiting effect of punishment is misplaced, as some of the most onerous experiences within the criminal justice system occur prior to sentencing (e.g., arrest, pretrial detention, bail process, pretrial monitoring, fines and fees, etc.).<sup>16</sup> Others still suggest that community-based alternatives to incarceration may be just as harmful from the offender's perspective, as they may require burdensome (and even costly) conditions, such as electronic monitoring, drug/alcohol testing, curfews, and regular check-ins.<sup>17</sup> However, a sharper set

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13. Daniel S. Nagin, *Criminal Deterrence Research at the Outset of the Twenty-First Century*, 23 CRIME & JUST. 1, 1–2, 4, 6–7, 15–16, 18 (1998).

14. Robert F. Meier & Weldon T. Johnson, *Deterrence as Social Control: The Legal and Extralegal Production of Conformity*, 42 AM. SOC. REV. 292, 294–95 (1977); see JACK P. GIBBS, CRIME, PUNISHMENT, AND DETERRENCE 29–35 (1975).

15. Mark C. Stafford & Mark Warr, *A Reconceptualization of General and Specific Deterrence*, 30 J. RES. CRIME & DELINQ. 123, 124–26 (1993).

16. JOHN IRWIN, THE JAIL: MANAGING THE UNDERCLASS IN AMERICAN SOCIETY 42–100 (2013); Will Dobbie, Jacob Goldin, & Crystal S. Yang, *The Effects of Pretrial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges*, 108 AM. ECON. REV. 201, 236–38 (2018); Arpit Gupta, Christopher Hansman, & Ethan Frenchman, *The Heavy Costs of High Bail: Evidence from Judge Randomization*, 45 J. LEGAL STUD. 471, 497–99 (2016); see Karla Dhungana Sainju, Stephanie Fahy, Katherine Baggaley, Ashley Baker, Tamar Minassian, & Vanessa Filippelli, *Electronic Monitoring for Pretrial Release: Assessing the Impact*, FED. PROB., Dec. 2018, at 3, 3–4.

17. See Joan Petersilia & Elizabeth Piper Deschenes Rand, *Perceptions of Punishment: Inmates and Staff Rank the Severity of Prison Versus Intermediate Sanctions*, 74 PRISON J. 306, 306–27 (1994); Alisha Williams, David C. May, & Peter B. Wood, *The Lesser of Two Evils? A Qualitative Study of Offenders' Preferences for Prison Compared to Alternatives*, 46 J. OFFENDER REHABILITATION 71, 73–75 (2008); Peter B. Wood & Harold G. Grasmick, *Toward the Development of Punishment*

of criticisms has come from criminologists who flatly reject the notion that the experience of incarceration can be captured using a crude indicator of whether or not an individual was sentenced to prison for their crimes.<sup>18</sup>

### B. *Social Experience*

Despite the obvious methodological appeal to the specific deterrence approach of identifying incarceration's toll, it is widely understood that the effect of prison on those who experience it cannot be boiled down to a simple cost. Rather, such a calculation involves a much more nuanced accounting of the social experience of incarceration and incarceration's attendant costs for inmates' future behavioral outcomes. Within the prison setting, individuals live and affiliate with other inmates from whom they may acquire criminogenic attitudes, beliefs, and behaviors.<sup>19</sup> They are exposed to a prison environment that includes various noxious stimuli including criminal victimization, harsh or erratic supervision and crowded, noisy, and unpleasant living conditions.<sup>20</sup> Bonds between inmates, their families, and social support networks are severed, isolating individuals from conventional people and institutions.<sup>21</sup> Finally, individuals are stigmatized upon their return to the community, complicating the process of reintegration and limiting their residential and career opportunities.<sup>22</sup> These pathways reflect existing strands of criminological theorizing, including social learning, strain, social bond, and labeling approaches. Taken together, they characterize the "social experience" of prison and support the view that incarceration may actually increase—rather than

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*Equivalencies: Male and Female Inmates Rate the Severity of Alternative Sanctions Compared to Prison*, 16 JUST. Q. 19, 20–46 (1999).

18. Cullen, Jonson, & Nagin, *supra* note 9, at 50S–53S.

19. See Michael Tonry & Joan Petersilia, *American Prisons at the Beginning of the Twenty-First Century*, 26 CRIME & JUST. 1, 6–7 (1999).

20. See Kristie R. Blevins, Shelley Johnson Listwan, Francis T. Cullen, & Cheryl Lero Jonson, *A General Strain Theory of Prison Violence and Misconduct: An Integrated Model of Inmate Behavior*, 26 J. CONTEMP. CRIM. JUST. 148, 152–54 (2010); Shelley Johnson Listwan, Christopher J. Sullivan, Robert Agnew, Francis T. Cullen, & Mark Colvin, *The Pains of Imprisonment Revisited: The Impact of Strain on Inmate Recidivism*, 30 JUST. Q. 144, 146–48, 153–55 (2013); Richard C. McCorkle, *Personal Precautions to Violence in Prison*, 19 CRIM. JUST. & BEHAV. 160, 160–62, 165–70 (1992); John Wooldredge & Benjamin Steiner, *Race Group Differences in Prison Victimization Experiences*, 40 J. CRIM. JUST. 358, 358–62 (2012).

21. Donald Braman & Jenifer Wood, *From One Generation to the Next: How Criminal Sanctions Are Reshaping Family Life in Urban America*, in PRISONERS ONCE REMOVED: THE IMPACT OF INCARCERATION AND REENTRY ON CHILDREN, FAMILIES, AND COMMUNITIES 157, 158–67 (Jeremy Travis & Michelle Waul eds., 2003).

22. JEREMY TRAVIS, BUT THEY ALL COME BACK: FACING THE CHALLENGES OF PRISONER REENTRY 163–66, 220–26 (2005).

reduce—the criminal and/or violent proclivities of released offenders and, in turn, increase recidivism.

In sum, two competing sets of views regarding the nature of incarceration effects on reoffending are reflected in prior research conducted in this area. Although few specific theoretical claims have been made regarding the impact of incarceration on violent offending, similar arguments apply. In the following sections, I review what is known about the link between incarceration and reoffending, beginning with the research assessing recidivism generally, and follow up with the limited body of work focused on incarceration effects on violent reoffending.

### III. PRIOR RESEARCH ON THE IMPACT OF INCARCERATION ON RECIDIVISM

The most straightforward approach to determining the extent to which prisons reduce offending is to examine overall rates of recidivism. Low rates would suggest that imprisonment may specifically deter. Conversely, high rates would signal a limited capacity of prisons for discouraging future offending. The Bureau of Justice Statistics' (BJS) Study of State Prisoners draws on criminal history records to assess the number and types of crimes committed by state prisoners following their release.<sup>23</sup> The first study was conducted in 1983 and included eleven states and a three year follow-up period.<sup>24</sup> The most recent data follows a sample of inmates released from facilities in 30 states over a period of nine years.<sup>25</sup> Findings based on this most recent release cohort indicate that an estimated 68% of released prisoners were rearrested within three years, 79% within six years, and 83% within nine years.<sup>26</sup> These findings suggest that the specific deterrent effect of imprisonment is not particularly strong. However, they provide little in the way of comparing the effect of incarceration to other punishment options.

Roughly a decade ago, a review piece was published that took stock of the literature on imprisonment and recidivism.<sup>27</sup> Included in this review were studies that employed a broad array of methodological techniques ranging from

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23. ALLEN J. BECK & BERNARD E. SHIPLEY, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, RECIDIVISM OF PRISONERS RELEASED IN 1983, at 1–2 (1989), <https://www.bjs.gov/content/pub/pdf/rpr83.pdf> [<https://perma.cc/2PU9-UTRH>].

24. *Id.*

25. MARIEL ALPER, MATTHEW DUROSE, & JOSHUA MARKMAN, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, 2018 UPDATE ON PRISONER RECIDIVISM: A 9-YEAR FOLLOW-UP PERIOD (2005-2014) 1 (2018), <https://www.bjs.gov/content/pub/pdf/18upr9yfup0514.pdf> [<https://perma.cc/M3RT-LFAQ>].

26. *Id.*

27. See Nagin, Cullen, & Jonson, *supra* note 1, at 126–28, 180–87.



logistic regression to instrumental variable approaches.<sup>28</sup> Some compared the outcomes of individuals who did and did not experience incarceration within a broader framework of unpacking criminal trajectories, while others were focused specifically on the question of whether imprisonment exerts a specific deterrent effect.<sup>29</sup> Taken together, the findings suggested that prison is not more effective than non-custodial sanctions at reducing recidivism. In fact, they suggested that the effect of prison is either null or slightly criminogenic.

For example, Sampson and Laub, in their seminal book on crime over the life course, considered the consequences of official criminal justice sanctions (conceptualized therein as time served) on future offending.<sup>30</sup> They found no evidence of a direct link between juvenile incarceration and subsequent criminal behavior, thus refuting a specific deterrent effect of confinement.<sup>31</sup> Yet, given their interest in the generation of cumulative continuity whereby official sanctioning and other negative events associated with delinquent involvement limit youths' life chances, the authors assessed whether the effects of incarceration on future crime may be indirect.<sup>32</sup> Consistent with the notion of cumulative continuity, Sampson and Laub demonstrated that length of incarceration negatively influences job stability which, in turn, increases one's likelihood of reoffending.<sup>33</sup> These findings align with a structural labeling interpretation and reflect the stigmatizing influence of the prison experience.

In a more recent investigation, Nagin and Snodgrass provide a direct test of the effect of incarceration on offending.<sup>34</sup> Whereas most of the prior work comparing the effect of imprisonment to noncustodial sanctions suffers from potential bias due to unobserved heterogeneity, this investigation leverages the random assignment of judges in the Pennsylvania criminal court system to determine whether incarceration increases recidivism relative to other noncustodial alternatives.<sup>35</sup> This strategy represents an improvement over even some of the most rigorous matching techniques employed in previous studies as randomization eliminates any systematic differences that may exist between

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28. *See id.* at 133, 165.

29. *See id.* at 124–25, 150.

30. ROBERT J. SAMPSON & JOHN H. LAUB, *CRIME IN THE MAKING: PATHWAYS AND TURNING POINTS THROUGH LIFE* 162–63 (1993).

31. *Id.* at 163.

32. *Id.* at 124, 163–65.

33. *Id.* at 147, 167–68.

34. *See* Daniel S. Nagin & G. Matthew Snodgrass, *The Effect of Incarceration on Re-Offending: Evidence from a Natural Experiment in Pennsylvania*, 29 *J. QUANTITATIVE CRIMINOLOGY* 601, 601–04 (2013).

35. *Id.* at 602, 609–12, 625.

individuals sentenced to prison and noncustodial alternatives. Comparing the caseloads of judges who varied in their sentencing leniency, the authors examined whether incarceration influenced the rate at which offenders were arrested at the one, two, five, and ten year marks.<sup>36</sup> Based on their data from Pennsylvania, the authors concluded that incarceration does not appear to impact rearrest.<sup>37</sup> These findings are consistent with related investigations that use the same identification strategy as a basis for concluding that incarceration has no clear effect on recidivism.<sup>38</sup>

Since the publication of Nagin and Snodgrass's review, additional research has been published on the topic, including studies that employ increasingly rigorous methodologies to assess incarceration effects. In a recent example, the authors of another high-quality investigation reach a similar set of conclusions based on analyses using yet a different empirical approach.<sup>39</sup> Recognizing the lack of methodological rigor in existing studies of incarceration effects, Mitchell, Cochran, Mears, and Bales employed a regression discontinuity design to examine the impact of incarceration on recidivism.<sup>40</sup> Using data from a sample of convicted offenders in the state of Florida, the authors compared the outcomes of adult felons sentenced to prison for at least a year and a day to felons who received a non-prison sanction.<sup>41</sup> They found that the effect of prison on recidivism is largely null, with some evidence of small adverse effects, relative to alternative sanctions.<sup>42</sup> They concluded that their findings "raise[] questions about the utility of imprisonment for offenders of marginal seriousness"—the majority of whom were non-violent property and drug offenders and thus comprise the population targeted in discussions of sentencing reform and the future use of imprisonment in the United States.<sup>43</sup> These findings are broadly consistent with earlier work and provide further evidence that prison is not a particularly effective intervention, as it has no deterrent effects after release—and may actually increase individuals'

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36. *Id.* at 609.

37. *Id.* at 624–25.

38. See Donald P. Green & Daniel Winik, *Using Random Judge Assignments to Estimate the Effects of Incarceration and Probation on Recidivism Among Drug Offenders*, 48 *CRIMINOLOGY* 357, 380–81 (2010); Charles E. Loeffler, *Does Imprisonment Alter the Life Course? Evidence on Crime and Employment from a Natural Experiment*, 51 *CRIMINOLOGY* 137, 155–56 (2013).

39. See Ojmarrh Mitchell, Joshua C. Cochran, Daniel P. Mears, & William D. Bales, *Examining Prison Effects on Recidivism: A Regression Discontinuity Approach*, 34 *JUST. Q.* 571, 572–73 (2017).

40. *Id.* at 572–73, 575, 590–91.

41. *Id.* at 577.

42. *Id.* at 592.

43. *Id.* at 591.

propensity of reoffending. Taken together, existing evidence on the link between incarceration and recidivism appears to support a social experience view, as prison's effect on reoffending is either null or slightly criminogenic.

#### IV. INCARCERATION AND THE RISK OF VIOLENT RECIDIVISM

Although America's unprecedented levels of incarceration have been a mainstay of U.S. society for decades, the incarceration rate has begun to decline in recent years. In the period between 2006 and 2008, the incarceration rate peaked at 1,000 inmates per 100,000 adults.<sup>44</sup> By 2016, that rate had declined to 830 per 100,000, reaching its lowest rate since 1996.<sup>45</sup> These declines have sparked considerable discussion regarding the future of incarceration in the United States and have encouraged the reevaluation of many of the policies and practices undergirding the growth of imprisonment.<sup>46</sup> According to Cullen and Petersilia, "a new pragmatism has emerged" such that "[c]ontinuing to cram more and more offenders into crowded prisons . . . is becoming unthinkable."<sup>47</sup> Indeed, the results of recent public opinion polls reflect overwhelming support of different policy changes that reduce prison terms and shift offenders from prison to other noncustodial alternatives. Support for such changes is not restricted to any particular segment of the population; individuals from different political parties and regions of the country, as well as those from different age, gender, and race/ethnic groups shared these views reflecting a swing in punitiveness among U.S. voters.<sup>48</sup> These changing views are notable, and appear to align with the findings of recent research on incarceration and recidivism and scholarly conclusions regarding the potential utility of pursuing alternatives to imprisonment, as certain noncustodial options may not only be more cost-efficient, but also more effective.

Yet the support for noncustodial alternatives, as well as the waning public appeal of "get tough" policies, is confined to a particular type of offender/offense. The voter support of alternatives to prison cited above

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44. DANIELLE KAEBLE & MARY COWHIG, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, CORRECTIONAL POPULATIONS IN THE UNITED STATES, 2016, at 4 (2018), <https://www.bjs.gov/content/pub/pdf/cpus16.pdf> [<https://perma.cc/9YTQ-LC3L>].

45. *Id.*

46. See Joan Petersilia & Francis T. Cullen, *Liberal But Not Stupid: Meeting the Promise of Downsizing Prisons*, 2 STAN. J. CRIM. L. & POL'Y 1, 2-4, 41-43 (2015).

47. *Id.* at 24.

48. PUB. OP. STRATEGIES & THE MELLMAN GRP., PUBLIC OPINION ON SENTENCING AND CORRECTIONS POLICY IN AMERICA 1, 3 (2012), [https://www.pewtrusts.org/-/media/assets/2012/03/30/pew\\_nationalsurveyresearchpaper\\_final.pdf](https://www.pewtrusts.org/-/media/assets/2012/03/30/pew_nationalsurveyresearchpaper_final.pdf) [<https://perma.cc/6SV7-KPEP>] [hereinafter PUBLIC OPINION ON SENTENCING AND CORRECTIONS POLICY].

focused on non-violent offenders.<sup>49</sup> Relatedly, a number of recent examples at the policy-level reflect our evolving views on drug-related offenses and those who commit them, particularly nonviolent drug users.<sup>50</sup> For example, more than half the country adopted measures to reform their existing drug laws over the last decade,<sup>51</sup> and at the federal level, legislation has been introduced to revise federal mandatory sentences for nonviolent drug offenses.<sup>52</sup> The above provides compelling evidence that criminal justice reform is underway; however, whether such reforms will make a sizeable dent in our prison population is questionable (and contested).<sup>53</sup> This is important because recent reform efforts have tended to focus on the “non, non, nons” (nonserious, nonviolent, and nonsexual offenders)<sup>54</sup> despite the fact that individuals convicted of a drug offense actually comprise a small share of the prison population (roughly 20%).<sup>55</sup>

Notably absent from the messaging of reform advocates and policymakers are policies governing sanctions for violent offenses. In fact, the very mention of violent crime in reform-oriented rhetoric is typically limited to explanations of how and/or the extent to which moves away from low-level drug enforcement will free up resources to deal with “serious and violent” crime. Policy-makers may feel obliged to reify distinctions between offenders by contrasting the non-violent drug offenders with those convicted of more serious, violent offenses to keep up the momentum behind reform efforts. But the implication of these distinctions is that nonviolent offenders are deserving of more lenient treatment, whereas violent crimes warrant more severe

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49. *Id.* at 4–6.

50. MARIE GOTTSCHALK, CAUGHT: THE PRISON STATE AND THE LOCKDOWN OF AMERICAN POLITICS 107, 116, 165–68 (2015).

51. RAM SUBRAMANIAN & REBECCA MORENO, CTR. ON SENTENCING AND CORR., DRUG WAR DÉTENTE? A REVIEW OF STATE-LEVEL DRUG LAW REFORM, 2009–2013, at 7 (2014), [https://www.vera.org/downloads/Publications/drug-war-d%C3%A9tente-a-review-of-state-level-drug-law-reform-2009-2013/legacy\\_downloads/state-drug-law-reform-review-2009-2013-v5.pdf](https://www.vera.org/downloads/Publications/drug-war-d%C3%A9tente-a-review-of-state-level-drug-law-reform-2009-2013/legacy_downloads/state-drug-law-reform-review-2009-2013-v5.pdf) [<https://perma.cc/VE29-YKYC>]; Katherine Beckett, *The Politics, Promise, and Peril of Criminal Justice Reform in the Context of Mass Incarceration*, 1 ANN. REV. CRIMINOLOGY 235, 240 (2018).

52. See Smarter Sentencing Act of 2017, S. 1933, 115th Cong. § 4(2017) (sentencing modifications for certain drug offenses).

53. Beckett, *supra* note 51, at 244–45; Katherine Beckett, Anna Reosti, & Emily Knaphus, *The End of an Era? Understanding the Contradictions of Criminal Justice Reform*, 664 ANNALS AM. ACAD. POL. & SOC. SCI. 238, 254 (2016); Christopher Seeds, *Bifurcation Nation: American Penal Policy in Late Mass Incarceration*, 19 PUNISHMENT & SOC’Y 590, 594–98, 605 (2017).

54. GOTTSCHALK, *supra* note 50, at 116.

55. Wendy Sawyer & Peter Wagner, *Mass Incarceration: The Whole Pie 2019*, PRISON POL’Y INITIATIVE (Mar. 19, 2019), <https://www.prisonpolicy.org/reports/pie2019.html> [<https://perma.cc/Z54M-6X6B>].

penalties. Thus, rather than reflecting a real change in thinking about crime and punishment, public discourse may reflect “a new, bifurcated way of thinking and talking about punishment that draws a sharp line between nonviolent and violent offenders and depicts the former as worthy of reform but the latter as deserving of even greater punishment.”<sup>56</sup> The problem with this “way of thinking” and associated policy moves is that increases in the use of noncustodial sanctions (or shorter prison sentences) for certain nonviolent offenders will have a negligible impact on the prison population, as nearly half of all inmates are incarcerated for violent offenses.<sup>57</sup>

The relative lack of support for policy changes for violent offenses is a largely symbolic gesture based on moral boundaries established between offender types (violent vs. nonviolent). From an empirical standpoint, however, such boundaries may be meaningless. In order to evaluate this possibility, and to determine the utility of prison reforms targeting violent offenses, it is important to evaluate the effectiveness of different sanctions (e.g., incarceration or noncustodial options) under a range of variable conditions. One key consideration in such an endeavor is whether incarceration increases the risk of violent recidivism relative to alternatives. Although existing research in the recidivism tradition has empirically assessed the average effect of incarceration on recidivism, the question of whether incarceration influences the risk of violent recidivism remains largely unexplored. As articulated above, this question has particular policy relevance, and is central to discussions of strategies to reduce our prison population.

Yet ironically, we know surprisingly little about the impact of incarceration on violent recidivism. Some studies have begun to address this issue indirectly by examining linkages between indicators of sentence length or prison security level—markers often associated with violent offenses.<sup>58</sup> In a recent exception, Harding, Morenoff, Nguyen, Bushway, and Binswanger drew on data from a population-based cohort of convicted felons in Michigan to estimate the direct

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56. Beckett, Reosti, & Knaphus, *supra* note 53, at 243.

57. JAMES AUSTIN, LAUREN-BROOKE EISEN, JAMES CULLEN & JONATHAN FRANK, BRENNAN CTR. FOR JUSTICE, HOW MANY AMERICANS ARE UNNECESSARILY INCARCERATED? 9 (2016), [https://www.brennancenter.org/sites/default/files/2019-08/Report\\_Unnecessarily\\_Incarcerated\\_0.pdf](https://www.brennancenter.org/sites/default/files/2019-08/Report_Unnecessarily_Incarcerated_0.pdf) [<https://perma.cc/GA8K-QZX9>].

58. See e.g., M. Keith Chen & Jesse M. Shapiro, *Do Harsher Prison Conditions Reduce Recidivism? A Discontinuity-based Approach*, 9 AM. L. & ECON. REV. 1, 2–3, 5 (2007); Andrew D. Tiedt & William J. Sabol, *Sentence Length and Recidivism Among Prisoners Released Across 30 States in 2005: Accounting for Individual Histories and State Clustering Effects*, 16 JUST. RES. & POL’Y 50, 51–52 (2015).

effect of imprisonment on the probability of arrest for a violent crime.<sup>59</sup> The authors used a natural experiment in which they leveraged the random assignment of judges to criminal cases to compare the post-release outcomes of individuals sentenced to prison for felonies in Michigan between 2003 and 2006 to their counterparts who received a sentence of probation.<sup>60</sup> Violent recidivism was measured using arrest and conviction at one, three, and five years after sentencing.<sup>61</sup> They found no statistically significant effects of imprisonment on violent reoffending for those at the margin between prison and probation.<sup>62</sup> This finding held regardless of whether the original offense was violent or non-violent.<sup>63</sup> In sum, the results of this high-quality investigation suggest no difference in the likelihood of violent recidivism among those sentenced to prison or probation. Nevertheless, additional research is needed on the influence of imprisonment on violent recidivism specifically.

## V. CONCLUSIONS

Empirical evidence regarding the impact of imprisonment on recidivism should feature centrally in sentencing policy. Yet to date, prison policy has largely ignored research on imprisonment and reoffending. This is due, in part, to the frequent disconnect between research and policy. But it is also a result of the limited number of high-quality research studies on this topic. Additional research is needed on the effect of imprisonment on recidivism, with a particular focus on the conditions under which incarceration does (or does not) reduce recidivism. This will require moving beyond our focus on “averages,” an approach which has likely obscured potential sources of variability in effects of incarceration on future offending.<sup>64</sup> At present, we have enough evidence to be fairly confident of the following: (1) prison does not seem to be any more effective than non-custodial sanctions at reducing recidivism, and (2) imprisonment is no more effective than community alternatives at reducing violent recidivism. Still, the evidence base poorly positions members of the research community to contribute to policy discussions as we lack the scientific backing to provide a more nuanced set of policy recommendations.

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59. David J. Harding, Jeffery D. Morenoff, Anh P. Nguyen, Shawn D. Bushway, & Ingrid A. Binswanger, *A Natural Experiment Study of the Effects of Imprisonment on Violence in the Community*, 3 NATURE HUM. BEHAV. 671, 671–72 (2019).

60. *Id.*

61. *Id.* at 673–74.

62. *Id.* at 671–74.

63. *Id.* at 673.

64. See Daniel P. Mears, Joshua C. Cochran, & Francis T. Cullen, *Incarceration Heterogeneity and Its Implications for Assessing the Effectiveness of Imprisonment on Recidivism*, 26 CRIM. JUST. POL'Y REV. 691, 694–95 (2015).

### A. *Implications for Theorizing and Research*

Beyond a more general need for additional research on the incarceration–recidivism link, there is a particular need for well-designed studies that overcome the limitations associated with unobserved confounders. Examples of potential research designs that account for selection on unobservables include randomization, natural experiments, and regression discontinuity techniques. Given the ethical challenges of randomization in criminological research, and sentencing research in particular, natural experiments and regression discontinuity designs have become the gold standard in incarceration effects research. Although such approaches may be the most appropriate identification strategies available, it is important to consider their limitations. Of particular concern is the fact that these approaches effectively compare cases at the margins (i.e., those likely to receive either a sentence of prison or probation). That is, taking the example of judge randomization, researchers are able to leverage inter-judge sentencing disparities as a form of exogenous variation. Accordingly, the causal estimates do not take into account cases where all judges would have either assigned prison or probation. This means that individuals convicted of very serious, violent offenses (or very low-level, nonviolent offenses) are excluded, making it difficult to determine whether and how sentencing individuals of non-marginal seriousness to prison may influence their future offending. While it is true that policy reforms tend to target precisely this group of marginal offenders, our inability to provide estimates of incarceration’s effect on those treated most punitively by our criminal justice system is troubling. Of course the alternative, which would require sentencing serious offenders to community alternatives to observe whether or not they reoffend (perhaps violently), is also a tricky proposition.

We also need more in the way of theorizing and testing mechanisms underlying associations between incarceration and recidivism. The above discussion includes an overview of some of the potential pathways through which incarceration impacts future behavior. Yet these different views have received limited empirical attention. I have concluded that the preponderance of evidence appears to support a social experience, as opposed to specific deterrence, view; however, which features of the prison experience contribute most to individuals’ likelihood of reoffending is an open question. This will require attention to multiple contingencies, including the type of incarceration, the conditions of the facility, and the length of the sentence, among other factors.

As researchers, we need to think clearly about meaningful distinctions in our research and related policy recommendations. There is a desire, for example, to categorize individuals on the basis of offending typologies. If the

empirical research generally supported the idea that offenders specialize in certain types of crimes, then research and policy efforts targeting specific categories of offenses (e.g., non-violent crimes) would be warranted. However, decades of criminological research provides evidence of versatility in offending behaviors across criminal trajectories.<sup>65</sup> More recent investigations of generality versus specialization in offending have corroborated these earlier findings; Wiesner, Yoerger, and Capaldi examined official and self-report data on offending over a twenty-three year span and found that versatility was the predominant pattern.<sup>66</sup> Focusing on the commission of violent crimes, they also found no evidence to support specialization in violent offending in particular.<sup>67</sup> On the basis of this prior work, we must consider the utility of drawing distinctions and question whether our tendency to identify individuals as “violent” and “non-violent” reflect meaningful conceptual categories based on the criminological evidence.

Finally, one of the biggest challenges in interpreting the research findings on incarceration and recidivism is the lack of consistency with respect to measurement. Recidivism has been conceptualized using both official and self-report data, based on rearrest and/or reconviction, across a wide-ranging follow-up period, and often limited to a narrow geographical area. Scholars often fail to provide much detail on the restructuring of the data, including how cases are disaggregated based on offending information. In our research and related policy recommendations, we must work to achieve either improved consistency, or at the very least, a greater degree of transparency to ensure that our own conclusions, as well as the conclusions rendered by others based on a reading of our research, are based on a clear understanding of these measurement considerations and their implications.

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65. See e.g., Jacqueline Cohen, *Research on Criminal Careers: Individual Frequency Rates and Offense Seriousness*, in 1 CRIMINAL CAREERS & “CAREER CRIMINALS”, *supra* note 2, at 292, 293, 374–94; ALEX R. PIQUERO, DAVID P. FARRINGTON & ALFRED BLUMSTEIN, KEY ISSUES IN CRIMINAL CAREER RESEARCH: NEW ANALYSES OF THE CAMBRIDGE STUDY IN DELINQUENT DEVELOPMENT 3–5, 74–81 (2007); Alfred Blumstein, Jacqueline Cohen, Somnath Das, & Soumyo D. Moitra, *Specialization and Seriousness During Adult Criminal Careers*, 4 J. QUANTITATIVE CRIMINOLOGY 303, 305, 332 (1988).

66. See Margit Wiesner, Karen Yoerger, & Deborah M. Capaldi, *Patterns and Correlates of Offender Versatility and Specialization Across a 23-Year Span for At-Risk Young Men*, 13 VICTIMS & OFFENDERS 28, 28–29, 40–42 (2018).

67. *Id.* at 36; cf. D. Wayne Osgood & Christopher J. Schreck, *A New Method for Studying the Extent, Stability, and Predictors of Individual Specialization in Violence*, 45 CRIMINOLOGY 273, 275 (2007) (“Research on adult offenders has yielded modest support for specialization, which most often appears for violence. Yet other studies have reported that adults specialize in fraud and in serious property and drug offenses.” (citation omitted)).



### B. Policy Implications

In discussing and generating policy, it would serve us well to draw on insights from the field—at least where the evidence is strong enough for us to reliably do so. With respect to the question of incarceration and violent recidivism, that there is no difference in the risk of violent recidivism between those sentenced to incarceration and those sentenced to probation suggests that incarceration is not an effective method of reducing violent recidivism.<sup>68</sup> Further, that there was no difference across these two alternatives for those convicted of violent and non-violent offenses suggests that there is no need to treat violent offenders differently from a recidivism standpoint. Understandably, recidivism is not the only consideration and other factors (e.g., retribution) figure into sentencing decisions and broader policies.

The above reinforces the need to depoliticize the word “violent.” With few exceptions, offenders often commit a mix of violent and non-violent offenses (see above discussion on specialization versus versatility). Thus, researchers should be careful not to reinforce the false dichotomy between violent and non-violent offenders that has so permeated public discourse on policy reform. Indeed, there is considerable evidence to suggest that the current wave of criminal justice reforms is not comprehensive, but rather focuses on a particular “class” of offender.<sup>69</sup> The (un)intended consequence of this focus is that the policies and practices with respect to the sanctioning of individuals convicted of serious and violent offenses will not be downgraded, and may actually be stepped up.<sup>70</sup> Given the increasing support for “evidence-based” decision-making, criminologists can play a role in conversations with correctional policymakers. Accordingly, how we research specific topics, and how we interpret what the evidence says, can help guide these important discussions.

Finally, we have a tendency to view community supervision as a lesser alternative to prison, and one reserved for those convicted of less serious offenses. There is quite a bit of research that demonstrates, however, that community supervision is not necessarily “getting off easy.” In fact, some of this work has documented offenders’ preference for custodial sentences in lieu of intensive supervision.<sup>71</sup> And although we tend to focus on probation as an

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68. Harding, Morenoff, Nguyen, Bushway, & Binswanger, *supra* note 59, at 673.

69. See e.g., Smarter Sentencing Act of 2017, S. 1933, 115th Cong. § 4 (2017); GOTTSCHALK, *supra* note 50, at 107, 116, 165–68; PUBLIC OPINION ON SENTENCING AND CORRECTIONS POLICY, *supra* note 48, at 1, 3–5; SUBRAMANIAN & MORENO, *supra* note 51, at 7; Beckett, *supra* note 51, at 244–45.

70. Beckett, Reosti, & Knaphus, *supra* note 53, at 242.

71. Ben M. Crouch, *Is Incarceration Really Worse? Analysis of Offenders’ Preferences for Prison Over Probation*, 10 JUST. Q. 67, 68–69, 79 (1993).

option for certain low-risk offenders, a potential counterargument is that it may actually be *more beneficial* to offer noncustodial, community-based alternatives to high-risk populations to “soak them in services” that may not otherwise be available in the prison setting. Recognizing the concerns associated with transferring our overreliance on incarceration to an overreliance on probation,<sup>72</sup> there may nevertheless be circumstances in which probation presents a more efficient alternative for certain offenders who have been identified as too high-risk for less restrictive sanctions.

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72. Joan Petersilia, *Realigning Corrections, California Style*, 664 ANNALS AM. ACAD. POL. & SOC. SCI. 8, 9–12 (2016); Michelle S. Phelps, *Mass Probation: Toward a More Robust Theory of State Variation in Punishment*, 19 PUNISHMENT & SOC’Y 53, 54–55, 66–67 (2017).