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Obstacles to the Implementation of Criminal Justice Reform

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OBSTACLES TO THE IMPLEMENTATION OF CRIMINAL JUSTICE REFORM

by

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ABSTRACT

Mass incarceration or overincarceration has gained significant attention over the last two decades, and criminal justice reform seeks to address it. This study uses constructivist grounded theory to examine the implementation of criminal justice reform legislation in Mississippi. Mississippi was chosen as the study setting because the state has been recognized as a national leader in enacting reform legislation and it has one of the nation's highest incarceration rates. It is well established that policy implementation affects outcomes. Therefore, if the policies Mississippi is implementing are effective and they are implemented correctly, it stands to reason the state could benefit substantially from successful implementation. In other words, implementation should very much matter in Mississippi. The purpose of this dissertation was to build a set of theories that identify and explain obstacles to the implementation of criminal justice reform. The researcher applied Charmaz's (2014) constructivist grounded theory to do so, and the result was seven theories that best explained the primary obstacles to the implementation of reform legislation in Mississippi. These seven theories were: 1) *failure to convince*, (2) *failure to hit targets*, (3) *failure to exercise fidelity to statutory language*, (4) *failure to make data accessible*, (5) *failure to reinvest*, (6) *failure to make programs affordable*, and (7) *failure to address pre-trial problems*. *Failure to exercise fidelity to statutory language* was identified as the one theory that best explained, overall, blockades to implementation in Mississippi. These theories should be transferrable to other jurisdictions.

Keywords: Criminal justice reform; grounded theory; constructivist grounded theory; mass incarceration; overincarceration; over-incarceration; implementation analysis; implementation evaluation.

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Walking into a student orientation at 40 is a disorienting experience, and it took the generous and selfless assistance and guidance of numerous people to get me this far. I will start by thanking my Committee Chair, Dr. Josh Hill, for his time, effort, and insight in helping me with this dissertation, and also for advising and mentoring me throughout my doctoral studies. His dedication to helping his students learn is outwardly apparent, and his dedication to helping me with this project is yet another example of his service. I want to thank next my Committee Members, Drs. Wes Johnson, Iliyan Iliev, and Charles Scheer. Their comments throughout this process have been of immeasurable importance, and so too has their mentorship and teaching generally over the past several years. I also owe a debt of gratitude to the entire faculty of the USM School of Criminal Justice, Forensic Science and Security. You have made by experience a positive one and one of which I will think fondly. Many of you have made individual and specific efforts to help me along the way. Those are deeply appreciated.

The degree of thanks I owe to my family may be difficult to ever fulfill. Suffice it to say for the moment that I recognize you made this possible. And as a specific response to my six-year-old daughter, Hartley, who frequently asks, “When will you be done with your dissertation?” I can finally answer: “Now.”

DEDICATION

To my wife, Megan, daughter, Hartley, and son, Thatcher.

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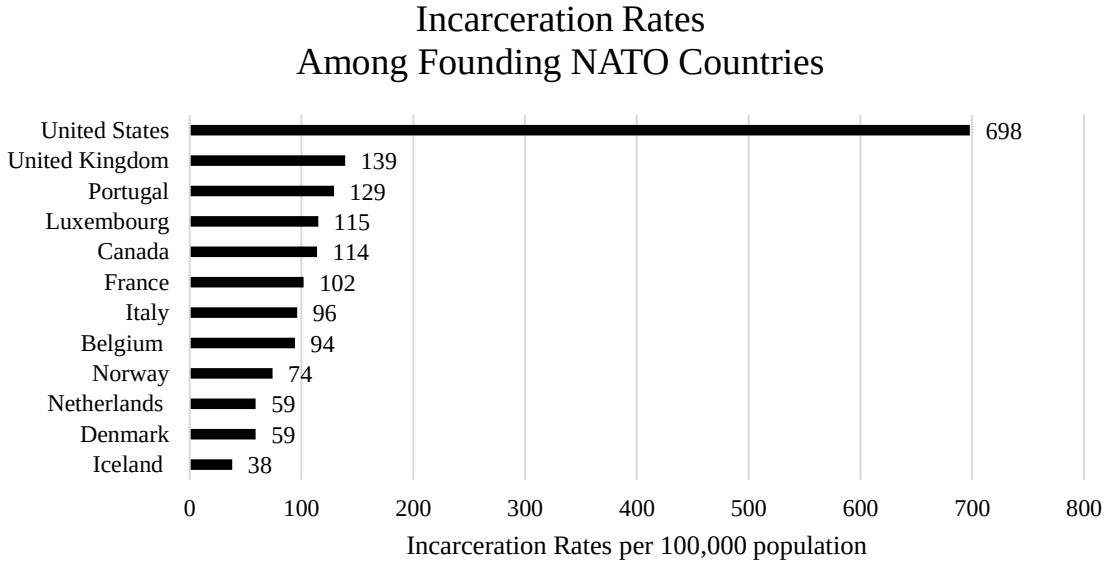
CHAPTER I - INTRODUCTION

There is an oft-repeated phrase that the United States has five percent of the world's population but 25 percent of its prisoners (Loury, 2008; Ye Hee Lee, 2015). The raw size of its incarcerated population exceeds every other nation in the world except perhaps China, whose estimated incarcerated population ranges from approximately 400,000 persons below the United States to approximately 200,000 persons above it (World Prison Brief, 2018; see also Cullen & Jonson, 2017; Gottschalk, 2015; Pfaff, 2017). Its incarcerate rate, which is the rate at which persons are incarcerated per population, far exceeds other liberal democracies (Pfaff, 2018; Wagner & Sawyer, 2018; Wagner & Walsh, 2016). For example, as shown in Figure 1, its 2016 incarceration rate of 698 persons per 100,000 in jails or prisons was substantially higher than the United Kingdom, which was the NATO nation with the closest rate at 139 such persons per 100,000 (Wagner & Sawyer, 2018). The difference between the United States and United Kingdom was a difference of 559 persons per 100,000, and when extrapolated across 10,000,000 persons in a sample population, it was a difference of 55,000 persons. These differences become larger when comparing the United States to the other NATO nations such as neighboring Canada with a rate of 114, France with 102, and Iceland with the lowest at 38. The U.S. rate arguably surpasses advanced autocracies and totalitarian states, but transparency issues with those nations make their data less reliable and that conclusion less certain.

Figure 1. U.S. incarceration rate versus NATO countries.



Note. The rates were obtained from Wagner and Sawyer (2018), who calculated the rates based on data from the World Prison Brief from the Institute for Criminal Policy Research.

The Sentencing Project has estimated that even assuming a 1.8% decline in the U.S. prison population per year, it would take until 2101 for the population to return to 1980 levels when there were 315,964 prisoners and our rate and population were more comparable to other nations (Gottschalk, 2015). The amount of work that will be required to reduce the incarceration rate and prison population raises an initial question: is this a problem worth addressing? (Alexander, 2010; Garland, 2001; Gottschalk, 2015; Pfaff, 2017; Weiss & MacKenzie, 2010). Yes, for economic reasons and, when overincarceration occurs, moral ones. Corrections costs have ballooned over the last several decades, claiming an ever-increasing number of tax revenues (Cullen & Jonson, 2017; Gottschalk, 2015). For example, from 1979/1980 – 2012/2013, state and local corrections expenditures increased by 324%, from $17 to $71 billion (Brown & Douglas-Gabriel, 2016; Stullich, Morgan, & Schak, 2016). Some observers such as Pfaff (2017)

are dismissive of this financial concern on the grounds these amounts constitute a small percentage of state budgets, but this line of thinking is how "[a] billion here, a billion there, and pretty soon you're talking real money" becomes a reality (U.S. Senate Historical Office, 2020). These are real dollars that could be dedicated to other worthwhile public investments or savings to taxpayers. In addition to economic considerations, moral ones are implicated as well (Alexander, 2010; Gottschalk, 2015). These are essentially arguments that the fabric of communities and families are torn apart when persons are incarcerated and that we are currently *over*incarcerating. Imprisonment generally leaves damage in its wake to parties who did no wrong, such as spouses and children who are left behind. This can have drastic effects on those who now no longer have a father, mother, uncle, aunt, brother, sister, etc. to be present in their lives. Therefore, if society is *over*incarcerating beyond the amount necessary to serve public safety and the functions of the criminal justice system, incarceration becomes a problem. This is a potential cost to these persons and society that should be considered.

Criminal justice reform largely assumes mass incarceration is a problem and seeks to address it (Garduque, 2018; Mauer, 2011; Pew Charitable Trusts, 2016; Pew Charitable Trusts, 2018a; Schoenfeld, 2012). Over approximately the past two decades, criminal justice reform legislation and policies have been enacted at the local, state, and federal levels (Cadora, 2014, Mauer, 2011). All of these efforts have sought in some way to reduce incarceration levels, and more legislation continues to be proposed, debated, and enacted today. These efforts address a mix of front-end reforms, such as sentencing reduction, and back-end reforms, such as recidivism reduction, parole changes, and reentry assistance (Mauer, 2011).

Efforts to reform criminal justice began at about the same time as evidence-based practices were being adopted numerous fields, including criminal justice. (Garduque, 2018; Mauer, 2011; National Institute of Corrections, 2009; Pew Charitable Trusts, 2016; Schoenfeld, 2012). Evidence-based practices expressly involve the application of scientific principles to public policy (Miller & Miller, 2015). Typically, a policy or program is "evidence-based" only after rigorous examination and successful replication, meaning that the program has been successfully implemented in at least one location other than the site of the original study (Baron, 2018; Cullen & Jonson, 2017; Miller & Miller, 2015). As a result of criminal justice reform and evidence-based practices rising in popularity at about the same time, many state-level criminal justice reform packages are based at least in part on evidence-based practices (Mauer, 2011, Pew Charitable Trusts, 2017a).

Criminal justice reform must be implemented in a "criminal justice system" or apparatus that is vast and complex. Reform generally must be implemented across and within the numerous government entities, including state-level departments of corrections, local law enforcement agencies, state prisons, local jails, courts, juvenile courts and detention facilities, and private contractors (Smith et al., 2012; Mears, 2010). Problems arise. Legislators cannot foresee every contingency that will be faced by those charged with implementing legislation. Additionally, those charged with implementing legislation do not always share the same values as those enacting it (Lipsky, 1980; Persson & Goldkuh, 2010; Rothstein, 2003).

Traditional bureaucracies are thought to exhibit hierarchical lines of authority and rigid rule application (Boyne, 2002; Pandey & Wright, 2006; Wright & Pandey, 2010;

Wright, 2004). Although many public agencies today maintain many of these characteristics, they are often not as bureaucratic as is commonly believed and civil servants and street-level bureaucrats may exercise discretion and serve as a filter between legislation and its implementation (Smith et al., 2012). Even in agencies where upper-level management adopts criminal justice reform as a priority agenda item, there may be limits to the ability of the leadership to change the attitudes and beliefs of those who disagree with reform but are charged with its implementation (Lipsky, 2010; Maynard-Moody and Musheno, 2003). This, in turn, can negatively affect implementation.

It is well-established that policy implementation affects outcomes (Durlak & Dupree, 2008; Duwe & Clark, 2015; Gresham et al., 1993). Because of this, it can reasonably be stated that criminal justice reform cannot reach its full level of effectiveness if it is not implemented correctly (Lipsey, 1999; Mihalic & Irwin, 2003, Miller & Miller, 2015; Zajac, 2015; Wilson & Lipsey, 2000). Implementation of state-level criminal justice reform is particularly important because approximately 87% of incarcerated persons are held in state systems (Pfaff, 2017). This means that state-level reforms have the most potential to impact the size of the overall prison population (Cadora, 2014; Campbell et al., 2015; Hagan, 2010; Pfaff, 2017; Prison Policy Initiative, 2019).

Problem Statement

Implementation problems are common with criminal justice legislation (Mears, 2010; Smith et al., 2012). Identifying the source of these problems is difficult because implementation often occurs in a "black box" (see also Duwe & Clark, 2015, Latessa, 2018; Zajac, 2015). That is, there is an information vacuum because we cannot see the

process as it unfolds. Activities occur within the box, but they cannot be seen by the outside observer. This leads to a situation where even though the existence of some type of implementation problem can often be inferred through identification of a failed policy, identifying the precise source of a problem can be challenging if not impossible.

While outcome evaluations are common and scholarship about "what works" in criminal justice is fairly well-developed, implementation evaluations have been conducted with far less frequency (Petersilia, 2008; Lin, 2012). This has resulted in implementation scholarship that is unclear, and there does not yet appear to be a broad consensus about the factors that lead to successful implementation or serve as an obstacle to it (Latessa, 2018; Mears, 2010).

The criminal justice implementation evaluations that do exist provide frameworks for research such as this (Duwe & Clark, 2015; Ellickson and Petersilia, 1983; Greenwood & Welsh, 2012; Smith et al., 2012). These studies generally seek to identify factors that lead to successful implementation, as opposed to identifying obstacles, but the obstacles that have been identified include a lack of financial resources, lack of stakeholder buy-in, staff resistance to change, policy complexity, political and community resistance, and inadequate time or infrastructure (Bishop, 2012; Greenwood & Welsh, 2012; Lipsey & Howell, 2012; Mihalic & Irwin, 2003; Smith et al., 2012). These studies have generally used the case study method, and important to the present research, a study has not been found that used the grounded theory approach to construct a theory or theories about obstacles to the implementation of criminal justice reform. This dissertation does just that: it uses the grounded theory approach to qualitative research to develop a set of theories about obstacles to the implementation of criminal justice reform.

Study Setting

Mississippi was an ideal location in which to undertake this study. Mississippi has one of the highest incarceration rates in the nation that has one of the highest incarceration rates in the world (Prison Policy Initiative, 2019). At the same time, the state has been recognized as a leader in criminal justice reform and the development of evidence-based practices (Leins, 2019; Pew Charitable Trusts, 2017a). In 2012, Mississippi joined the Pew-MacArthur Results First Initiative. This initiative seeks to incorporate evidence-based practices into state-level policymaking in all fifty states (Pew Charitable Trusts, 2017b). In 2014, the State Legislature passed the first criminal justice reform measures with House Bills 585 and 906. When discussing criminal justice reform in Mississippi, House Bill 585 is the foundational bill. In short, House Bill 585 reduced mandatory time for many offenses and expanded judicial discretion to use alternative sentencing schemes, such as drug courts (Gelb & Pheiffer, 2018; Wright, 2014). House Bill 906 dismantled the "regimented inmate discipline" (RID) program, which was a paramilitary-style training program modeled after similar programs popular around the country in the 1980s through the early 2000s, and called for an evidence-based program to take its place (Blakinger, 2019; Dreher, 2016). Legislative reform efforts continued after 2014 with the passage of House Bill 387 in 2018, House Bill 1352 and Senate Bill 2781 in 2018, and Senate Bill 2795 in 2021. Collectively, these measures following House Bill 585 are directed towards incarceration for the inability to pay court fees or bail (relevant to an issue known as "debtors' prisons"); the increased use of alternative sentencing and specialist courts such as drug courts, mental health courts, and veterans

courts; changes to probation and parole; and occupational licensing issues, among others (Gates, 2018; Gelb & Pheiffer, 2018; Robertson, 2019).

The size of Mississippi's prison population has declined since it began adopting these reform measures, providing a correlation (but not necessarily causation) between reform measures and declining populations. Data published by the Mississippi Department of Corrections (MDOC) reflects that in January of 2014, the year in which the first criminal justice reform measures were enacted, the inmate custody population numbered 22,008. By January of 2020, the number was 18,971, a reduction of over 3,000 inmates (Mississippi Department of Corrections, 2020).

Prison populations are expensive and detract from other public investments or savings to taxpayers. In the case of Mississippi, total appropriations to MDOC have increased over time. From 2011 to 2020, allocations to MDOC increased from $328,771,055 to $338,384,557. The increase from 2011 to 2015 was particularly pronounced, when allocations reached a high of $367,051,342. There has been a general decline in allocations from 2015 until 2020, the same time span during which the first criminal justice reform measures were enacted and prison populations began to decline, but it is unknown whether these decreases were tied to actual savings resulting from reform or simply reflected forced legislative budget cuts.

In addition to the financial cost, there is also the non-economic, human side of the equation to consider. Seven percent of Mississippi children – 55,000 kids – have had a parent in prison (Frazier, 2020). Research indicates the incarceration of a parent is damaging to a young person's education, health, and social well-being, and can be more traumatic than death or divorce (Sparks, 2015). Reducing the number of innocently

affected children impacts their futures and how they develop as citizens. For these reasons, both the economic and the non-economic, reform in this state can make a substantial difference, and it makes the state an attractive location to examine whether criminal justice reform has been implemented as advertised.

Purpose Statement

If implemented correctly, criminal justice reform measures have the potential to save tax dollars and positively impact lives and communities. Part of ensuring that reform measures are implemented correctly is determining whether obstacles exist, and if so, identifying what they are and how and why they exist. Only then can the obstacles be addressed. The purpose of this study was to build a grounded theory or theories that identify and explain obstacles to the implementation of criminal justice reform (Creswell, 2018; Charmaz, 2014, Kilbourn, 2006). These theories have the potential to educate decision-makers on the obstacles that need to be removed for full implementation to occur. To achieve the objective of this study, the researcher attempted to get inside the metaphorical black box of policy implementation by interviewing key players in state and local government who have had active roles in implementing Mississippi's criminal justice reform measures and others who are knowledgeable about the process.

CHAPTER II – LITERATURE REVIEW AND THEORETICAL PERSPECTIVE

An implementation evaluation is a very specific type of policy analysis that is situated within a larger policy evaluation framework. Mears (2010) and Welsh and Harris (2016) offer two such frameworks that are for the specific purpose of evaluating criminal justice policy. Mears (2010) proposed a framework that he termed the "evaluation research framework," and it consists of five hierarchical steps: (1) a needs assessment; (2) a theory evaluation; (3) an implementation evaluation, also called a process evaluation; (4) an outcome evaluation, also called an impact evaluation; and (5) a cost-efficiency evaluation, which consists of both cost-effective and cost-benefit evaluations. Welsh and Harris (2016) offered a framework similar to that offered by Mears, but suggested seven steps instead of five. The difference between the two is one more of form (i.e., how to articulate the number of steps) than of substance (i.e., how policy is examined).

Each of the steps in Mears' hierarchy or similar frameworks such as Welsh and Harris (2016) is important, yet distinct. To date, the focus in criminal justice literature has been on outcome analysis. An outcome analysis examines whether and how well a policy achieves its intended objective, and it is often referred to colloquially in the literature as "what works" (Fagan & Mihalic, 2003; Lin, 2012; Mihalic & Irwin, 2003; Miller & Miller, 2015; Smith et al., 2012).

This focus on outcome analysis has produced considerable scholarship concerning "what works," but much less attention has been paid to implementation analysis, which is the evaluative step that precedes an outcomes analysis. An implementation analysis is concerned with whether a policy is implemented as intended as opposed to whether it produced intended outcomes (Mears, 2010). It is sometimes referred to colloquially as

"how it works" (Fagan & Mihalic, 2003; Mihalic & Irwin, 2003; Miller & Miller, 2015; Smith et al., 2012) or making "'what works' work" (Andrews, 2006, p. 595). The most important objective of an implementation analysis is to ascertain program fidelity, also referred to as program integrity (Mears, 2010; Miller & Miller, 2015). Fidelity is a measurement of whether a treatment is delivered consistent with the intent and design of a policy or program (Durlak and DuPre, 2008; Mears, 2010, Miller & Miller, 2015). The growth of evidence-based policies and funding for them has placed a premium on the ability of researchers and practitioners to measure program fidelity because financing tends to flow to programs that are proven to work as advertised (Miller & Miller, 2015).

More attention to implementation, "how it works" or making "'what works' work," is needed for a number of reasons. One, implementation affects outcomes (Durlak & Dupree, 2008; Duwe & Clark, 2015; Gresham et al., 1993; Lipsey, 1999; Mihalic & Irwin, 2003; Miller & Miller, 2015; Zajac, 2015; Wilson & Lipsey, 2000). This is why some scholars suggest implementation evaluations *must* precede outcome evaluations in order to make reliable causal inferences (Duwe & Clark, 2015; Latessa, 2018; Miller & Miller, 2015). For example, undiscovered poor implementation can lead to Type 2 errors, which means an observer can conclude a program is not effective when it might have been, had it been implemented correctly (Latessa, 2018; Salisbury, 2015; Zajac, 2015). In this situation, the failure is a reflection of a poorly implemented policy, and not necessarily a bad policy (Miller & Miller, 2015). Stated slightly differently, it is not that the program "did not work," but that it "did not happen" (Van Voorhis, Cullen, & Applegate, 1995, p. 20). Two, undiscovered poor implementation not only leads to incorrect conclusions about the effectiveness of the specific policy being examined, but it

also leads to negative conclusions about the effectiveness of policy generally and strengthens the "nothing works" mentality (Martinson, 1976; Zajac, 2015). Three, poor implementation negatively affects the recipients of a program because they do not receive the needed service or product (Latessa, 2018). For example, if legislation is drafted with the intention of providing a benefit to a particular group and only some of the group receives the benefit or some or all only partially receive the benefit, recipients are negatively affected. This is worthy of discovery in and of itself. Four, understanding implementation affects our ability to refine and improve policies and programs. Finally, and very importantly, even proven programs cannot be taken "off-the-shelf" and transported into different environments if we do not have a solid understanding of "how it works" or making "'what works' work" (Lin, 2012; Mihalic & Irwin, 2003). Implementation studies help close the gap between research as it exists in controlled settings and reality as it exists on-the-ground so that this can be done (Gottfredson & Gottfredson, 2002). Ultimately, this makes policy more useful and responsive to the problems it seeks to address.

Implementation evaluations are difficult because implementation often occurs in a black box (Latessa, 2018; Mears, 2010; Zajac, 2015). Qualitative research methods can help peer into this box and therefore are particularly well-suited for this type of evaluation (Miller and Miller, 2015). Some scholars, such as Miller and Miller (2015), suggest the result of having too few qualitative researchers in criminology and criminal justice is the scarcity of implementation analyses within the fields. This has resulted in criminology and criminal justice frequently having to borrow implementation scholarship from other disciplines. Miller and Miller (2015) also critique the implementation studies

that do exist within the fields but do not use qualitative methods, such as Duwe and Clark (2015). Their overarching point is that some implementation failures are incapable of discovery or are at least less likely to be discovered unless qualitative methods are used.

Previous policy evaluations have sought to identify factors relevant to successful implementation in a variety of contexts. Particularly instructive is Ellickson and Petersilia (1983), which was specifically in the criminal justice context and whose findings have served as a foundation for other implementation studies in criminology, criminal justice, and other fields (Smith et al., 2012). They used the case study method to examine the implementation of 37 policy innovations across five states and eight counties. They defined policy "innovations" as programs or practices that were new to an adopting agency, and the innovations studied included nine victim or witness programs, 10 computer-assisted applications, eight targeted programs, and 10 offender programs.

Ellickson and Petersilia (1983, p. 22-23) termed their key findings "the six correlates of successful implementation": (1) an agency's motivation at adoption (as measured by whether the policy was initiated locally, dictated to the agency, or some mix of the two); (2) top leadership support, director and staff commitment, and, if applicable, external cooperation; (3) staff competence; (4) benefits that outweigh costs; (5) clarity of goals and procedures; and (6) clear lines of authority. The researchers viewed implementation as a process, and all of these correlates are dynamic except the first, which is static and measured by whatever it was at the time of adoption.

Strategies were also identified that can be used to influence the six correlates (Ellickson & Petersilia, 1983). These include providing benefits to those implementing the policy (a particularly important strategy in criminal justice where innovations rely on

input from multiple organizations); involving key actors in planning and problem solving; a flexible problem-solving process; phased implementation to build on prior achievements; craft-learning to enhance staff competence (learning lessons from active, local implementation of an innovation and disseminating lessons to employees); continual planning; and regular communication. Finally, they identified three obstacles to avoid: (1) symbolic participation of actors in the planning process or open-ended participation, by which they refer to an unnecessarily prolonged planning period without clear goals and an abdication of responsibility by top leadership; (2) a division of authority; and (3) premature certainty and inflexibility injected into a policy.

While Ellickson and Petersilia's (1983) analyzed the implementation of policy innovations in criminal justice agencies, other researchers have examined the implementation of school-based programs aimed at reducing behavioral problems such as violence, substance abuse, and criminal activity generally (Fagan and Mihalic, 2003; Gottfredson and Gottfredson, 2002). For example, Gottfredson and Gottfredson (2002) identified four potential obstacles to the implementation of policy innovations when examining 3,691 school-based programs: (1) organizational capacity; (2) organizational support (training, supervision, principal support), (3) program features (manuals, implementation standards, quality-control), and (4) integration into normal operations, local initiation, and local planning. Similarly, Fagan and Mihalic (2003) evaluated the implementation of Life Skills Training (LST), a three-year drug prevention program, across 70 sites consisting of 292 participating schools and approximately 130,000 students. The LST was selected for analysis because of its inclusion in the Blueprints for Violence Prevention Initiative, a series of 11 programs that have been subject to rigorous

testing, demonstrated significant reductions in violence, and identified by U.S. Department of Justice Office of Juvenile Justice and Delinquency Prevention as suitable for replication (see also Elliot & Mihalic, 2004, for a description of the initiative). The most commonly identified obstacle to implementation was teachers not wanting to reduce time that had historically been dedicated to core studies. This reflected a lack of buy-in from the very persons responsible for implementing the program, a factor that is commonly found to be important in the literature. Other obstacles included a lack of support from some management, administrators, program coordinators, and instructors; lack of instructor training; problems integrating a program into a site infrastructure; and instructor turnover, a problem that can overlap with instructor training.

Mihalic, Fagan, and Argamaso (2008) built upon Fagan and Mihalic (2003) when also examining the LST program over the life course of the three-year program at 105 different sites involving 432 schools. Many of the obstacles they identified overlapped with those identified by Fagan and Mihalic (2003), such as integrating the new program into the existing schedule (and in particular resolving tension with the time needed for core classes); instructors not regularly attending all training workshops; student misbehavior; program coordinator commitment and authority; school principal and administrator support; and instructor support.

Mental health research has also sought to identify factors relevant to policy implementation (Durlak & DuPre, 2008; Mancini et al., 2015; Nelson et al., 2013; Rapp et al., 2009). Durlak & Dupre (2008) identified two broad sets of factors which affect implementation and which they termed service delivery system factors and support system factors. Service delivery system factors include characteristics of the innovations,

organizational and community capacity, and service-provider qualities, whereas support system factors include training, technical assistance, and similar influences. While Durlak and Dupree (2008) identified and discussed these factors within the context of mental health programs for children, Nelson et al. (2013) discussed them in a study of a housing program designed to address homelessness and mental illness among adults and expressly noted their relevance in that specific arena. Similarly, Rapp (2009) found the most significant barriers to implementing evidence-based mental health policy included the behavior of front-line supervisors, front-line practitioners and others in the agency, and intra-agency synergy. Mancini et al. (2015) identified and categorized factors affecting implementation as either state-level facilitators and barriers or organization-level facilitators and barriers. State-level factors included the state mental health authority (which would be translatable in another context to an applicable government agency authority), financing, licensing process, and technical assistance or consultation. Organization-level factors included middle and upper management, team leadership, staffing, and change culture.

Stepping back from the more specific settings of schools or mental health and looking at policy implementation at a broader level, Mihalic & Irwin (2003) examined implementation in multiple contexts. The researchers expressly sought to differentiate the study from Ellickson and Petersilia (1983), with its focus on law enforcement programs, and Gottfredson and Gottfredson (2002) and others, with their focus on school-based programs. Mihalic & Irwin (2003) examined the implementation of eight Blueprints programs over two years at 42 different sites in the United States and across a wide range of treatments, including prenatal and postpartum care, school-based programming,

mentoring, family therapy, and foster care. The most important implementation factors they identified were teaching assistance quality, inconsistent staffing, community support, and program characteristics, such as quality of materials, time required, complexity, cost, and flexibility. The second most important factors identified included agency characteristics such as staff participation, communication, administrative support, clarity of goals, clear lines of authority, program champions, financial support, and political climate. Weaknesses in any of these areas would serve as an obstacle to policy implementation.

Over the past decade, a number of criminal justice studies have examined the implementation of innovative policies. Smith et al. (2012) was a case study examining the Earned Discharge (ED) pilot program in California, which aimed to reduce the state's incarcerated population by reducing the timeframe during which a low risk offender could be re-incarcerated for a technical violation while on supervision. ED sought to do this by reducing the parole time from one year to six months, but the policy was never implemented as intended and eligible participants were either not allowed to participate or, even if they were, frequently were not released from parole at the conclusion of six months. Smith et al. (2012) explained the implementation failure through a three-part typology of context, capacity, and content. Context involved lack of local political and law enforcement support, capacity involved a lack of leadership in the Division of Parole Operations (DAPO) and its inability to clearly communicate the goals of the ED program, and content involved confusion and disagreement among participating agencies about the content of the program itself (see also Campbell, 2012; Lin, 2012; & Schoenfeld, 2012) (discussing Smith et al., 2012). Similar content problems were encountered in California

when attempting to implement a legally mandated substance abuse treatment program for offenders, an experience studied by Wiley et al. (2004). There the treatment professionals responsible for implementing the program made assumptions about the types of offenders who would qualify for the program that conflicted with the assumptions made by judges, the very persons responsible for sending offenders into the program.

Later in the same year as Smith et al. (2012), Greenwood and Walsh (2012) published a study which they claimed was the first to examine how states promoted and supported the use of evidence-based practices in the area of delinquency prevention. Although the primary goal for Greenwood & Walsh (2012) was to measure the progress of different states in adopting evidence-based practices, the researchers also identified four obstacles to implementation: (1) when local investment is required but the benefits accrue to the state; (2) when funding streams are already committed to other programs and some of them are not evidence-based; (3) the complexity of coordination and implementation; and (4) staff resistance to change (see also Bishop, 2012; Lipsey & Howell, 2012) (discussing Greenwood & Walsh, 2012).

Contribution of this Dissertation

The subject of this study is the implementation of legislation, and legislation leaves state and local officials with considerable discretion in promulgating and adopting policies and programs to carry out legislative intent (Keiser, 1999; Persson & Goldkuhl, 2011; Riccucci, 2005). Unlike previous studies that used the case study method to describe implementation factors and problems, this study used the grounded theory approach and contributes a set of seven theories to inform future policymakers and

researchers. Through using grounded theory, it does so using first-hand knowledge from those in the field.

The researcher used the implementation perspective as set forth in Ellickson and Petersilia (1983) and adopted by Smith et al. (2012). The implementation perspective focuses on events after adoption of a policy or program and the actions of persons who are responsible for implementation. Under this perspective, successful innovations rely on changes in the attitudes and behaviors of actors charged with implementation and ultimately make progress towards the stated goal. While Ellickson and Petersilia (1983) recognize a small minority of innovations are ready-made at the time of adoption, most are flexible and change can occur as circumstances require (Ellickson & Petersilia, 1983). This should be no surprise. Even with established programs there is an ongoing debate about the tension between fidelity, widely recognized as the most important indicator of implementation, and adaptability. (Durlak & DuPre, 2008; Moore, Bumbarger, & Cooper, 2013; Morrison et al., 2009).

A competing perspective is the adoption perspective (Ellickson & Petersilia, 1983). This perspective focuses on the development and dissemination of new ideas. According to this perspective, the key determinants of successful implementation are the characteristics of the innovation and dissemination process. Those who would implement policy are viewed passively, and the assumption is that good ideas are self-executing. Therefore, once knowledge about them is disseminated, good innovations will be implemented as a matter of course. The researcher assumed that criminal justice reform is not self-executing, as advanced by the adoption perspective, and therefore the post-adoption role of relevant actors was explored.

Research Questions

Based on the existing literature above, a central question to guide this research is posed along with several sub-questions:

Central question:

Are there obstacles to the implementation of criminal justice reform legislation?

Research Sub-questions:

1. What are the obstacles?
2. How do these obstacles function?
3. Why are they there?
4. Why are they allowed to persist?

CHAPTER III - METHODOLOGY

Jock Young (2011) argued more theory is needed. The academic landscape, as he saw it, was filled with quantitative research and analysis, but there was a void of theoretical development to accompany these data driven inquiries. He created the visual of the "datasaurus" to represent this problem. The "datasaurus" was the body of a brontosaurus. The small head represents the paucity of theory in the field, and the enormous body represents the repeated quantitative analyses of these same theories, of which there are not enough, over and over and over again.

> *The datasaur, Empiricus Abstractus, is a creature with a very small head, a long neck, a huge belly and a little tail. His head has only a smattering of theory, he knows that he must move constantly but is not sure where he is going, he rarely looks at any detail of the actual terrain on which he travels, his neck peers upwards as he moves from grant to grant, from database to database, his belly is huge and distended with the intricate intestine of regression analysis, he eats ravenously but rarely thinks about the actual process of statistical digestion, his tail is small, slight and inconclusive.*

(Young, 2011, p. 15) (italics in original).

This dissertation seeks to be a part of the solution to that problem by offering a set of theories in the fields of criminal justice and criminology. Specifically, this dissertation created a set of theories about the phenomena that act as obstacles to the implementation of criminal justice reform. The following questions and sub-questions guided the researcher in creating these theories:

Central Question:

Are there obstacles to the implementation of criminal justice reform legislation?

Research Sub-questions:

1. What are the obstacles?
2. How do these obstacles function?
3. Why are they there?
4. Why are they allowed to persist?

The hope is that these theories can provide guidance to policy makers in other states and the federal government should they be implementing their own reform agendas, and to academics and other public policy researchers wishing to further explore these topics in future studies.

A Historical Review of the Qualitative Approach for Developing Theory

The qualitative method of study was selected precisely because this method is well-suited to developing theory (Tewksbury, 2009; Tewksbury, Dabney, & Copes, 2010). The methods used for qualitative analysis, such as interviews, often allow for a deeper exploration of a subject than quantitative research techniques (Charmaz, 2014; Creswell & Poth, 2018). This is, indeed, why qualitative approaches are sometimes coupled with quantitative approaches, e.g., they allow the researcher to fill information gaps left by quantitative instruments such as surveys (Harcourt, 2001; Mihalic, Fagan, and Argamaso, 2008). Additionally, one of the primary reasons qualitative studies are useful is because they give rise to the very theories that can later be tested using quantitative methods (Tewksbury, Dabney, & Copes, 2010; Worrall, 2000).

The different qualitative research approaches that can be adopted include ethnography, case study, narrative research, phenomenology, and grounded theory (Creswell & Poth, 2018). Grounded theory is used here because it allows the researcher to inductively and abductively (described below) construct a theory from data obtained from persons in the field through interviews. Such a theory is therefore said to be "grounded-in" (i.e., based on) the perspectives of the participants.

Grounded Theory: Its Early History

Grounded theory has intellectual foundations in the pragmatism and social constructivism of the University of Chicago and the positivism of Columbia University (Charmaz, 2014). It is a merging of these two worlds. Pragmatists are of the view that the value of a theory rests in its ability to be applied in a practical setting. They are also of the view that reality is subject to multiple interpretations and fluid. Early pragmatist scholars from the University of Chicago and others who influenced pragmatism include well-known names within academia such as Charles S. Peirce (1878/1958), George Hebert Mead (1932, 1934), and John Dewey (1919/1948, 1925/1958). Pragmatism provided the basis for symbolic interactionism, a term coined by Herbert Blumer, who was Mead's intellectual heir, and it is a theoretical perspective that reality is subjective with no deep, underlying truth to be discovered. Instead, reality is constructed through our interactions and use of language. "Reality" changes over time and is dependent on the person being asked.

In addition to the pragmatist and social constructivist underpinnings to grounded theory provided by the Chicago School, it also provided a foundation for qualitative methods through its use of life histories and cases studies in the early decades of the

1900s, and by the 1940s, participant observation (Charmaz, 2014). Problematically, while the Chicago School laid the groundwork for qualitative approaches through its use of life histories, case studies, and participant observation, the guidance scholars provided on precisely how to conduct this type of research was opaque, and absent from discussion was a precise articulation of field methods or any type of systematic approach.

Positivism supplied the other key foundation to grounded theory and came from the influence of Columbia University (Charmaz, 2014). Positivism enjoyed an explosive growth in the twentieth century and stressed systematic observation, replicable experiments, confirmed evidence, and falsification. Importantly, positivism also assumed an unbiased and passive researcher who could separate facts from values – a point that will be challenged by many modern-day grounded theorists, as discussed below. It was generally accepted at the time that application of these tenants provided the *only* method by which information reliable enough to be considered scientific or semi-scientific could be discovered. Positivism was associated with quantitative research, and by the mid-1900s, deductive quantitative research methods held complete dominance over inductive qualitative methods, which were frequently dismissed as anecdotal, biased, and unsystematic to such a degree as to render the research not reliable enough to be used as the basis for scientific inquiry. The result was a large imbalance between the number of quantitative analyses versus theory development, leading to Young's (2011) datasaurus.

It was against this backdrop that Glaser and Strauss introduced their book, *The Discovery of Grounded Theory*, in 1967. This text, prepared after Glaser and Strauss studied death and dying in hospitals in the early 1960s, codified the qualitative method for the first time (Charmaz, 2001). They wanted to develop theory from data as opposed

to deducing hypothesis from existing theories, and they believed codifying the qualitative method was the best way to go about this.

Glaser had been trained at Columbia with its emphasis on positivism, and Strauss at Chicago with its emphasis on pragmatism (Charmaz, 2014). This is how these two orientations became merged in grounded theory (Charmaz, 2001). With Glaser's background in quantitative research, he emphasized the scientific method, objectivity, the idea of the passive observer, replication, and the notion the truth is there, waiting to be discovered. He also emphasized middle-range theories. These are theories of social processes grounded in data, and they are distinct from the grand theories of mid-century sociology that lacked a basis in systematically analyzed data. Glaser's analytical approach helped to codify steps for qualitative analysis, providing a template for other researchers.

Strauss was influenced by the pragmatists' philosophical traditions of the University of Chicago (Charmaz, 2001, 2014). He adopted symbolic interactionism and Chicago's legacy of field research through the influence of Herbert Blumer and Robert Park while studying for his doctorate. Strauss argued people are active agents in their lives and not passive recipients of outside forces. He also argued that action was the central phenomenon to assess. According to his philosophy, it is process that is more important than structure because processes created structure, and not vice-versa. The meanings we apply to process and structures are subjective and social and we create the meanings through interactions and use of language. He was creative and free-thinking, and often engaged in a process he called "blue skying" (Charmaz, 2014, p. 10) in which he creatively imagined and teased-out linkages between concepts.

Although Charmaz (2014, 2017) notes it was not until 1978 in *Theoretical Sensitivity* that Glaser provided clarity to the precise steps involved in grounded theory, *The Discovery of Grounded Theory* nevertheless was a demarcation point for a shift in qualitative studies to a focus on methods. It is this shift that ultimately resulted in greater acceptance of the qualitative approach as producing information subject to a sufficient amount of scientific rigor and therefore reliable to a sufficient degree to contribute to scholarly debate. Charmaz described this development as "revolutionary" (Charmaz, 2014, p. 7). According to Glaser and Strauss (1967) and Glaser (1978), grounded theory has several key components including the simultaneous collection and analysis of data, approaching analysis without preconceived codes and categories, constructing codes and categories from data and not preconceived notions, the constant comparative method of constantly comparing data, codes and themes, advancing theory development at every step, writing memoranda to generate and synthesize ideas, and theoretical sampling for theory construction.

Strauss and Corbin (1990) – the same Strauss who had been partnered with Glaser – then introduced another version of grounded theory in *Basics of qualitative research: Grounded theory procedures and techniques*. Although this text served as an official break between the approaches of Strauss and Glaser, doctoral students studying under both have reported observing a growing divide between the two years before the actual publication of the book in 1990 (Charmaz, 2014). Strauss and Corbin emphasized technical and systematic procedures instead of more flexible procedures that arguably permit categories to emerge from the data (Creswell & Poth, 2018; Strauss & Corbin, 1998). Glaser (1992) critiqued Strauss and Corbin's approach as too systematic and as a

result forces data and analysis into preconceived categories (Charmaz, 2014). It is ironic that Glaser, the positivist influenced scholar from Columbia whose analytical skills contributed to the coding scheme of grounded theory, criticized Strauss, the pragmatist scholar from Chicago who engaged in "blue-skying," of ultimately adopting an approach that is too structured. The Strauss and Corbin (1990) approach is mentioned only briefly here to provide the reader with information about this version of grounded theory even though it is not the version of grounded theory used in this study.

The Development of Constructivist Grounded Theory

In the wake of Strauss and Corbin's 1990 publication, a number of grounded theorists began to alter the approach yet again, this time away from the positivism emphasized by Glaser as well Strauss and Corbin (Charmaz, 2014). Charmaz termed the new approach that was developed "Constructivist Grounded Theory" (p. 14), and this is the approach used for this dissertation. Lest this description of a move to a constructivist approach and away from an emphasis on positivism be misleading as to how far scholars ventured from earlier iterations of the theory, constructivist grounded theory adopted Glaser & Strauss's (1967) "original statement" (p. 12). This included an open-ended and iterative approach that uses constant comparative methods (comparing data to data and data to codes and codes to codes and codes to categories and categories to categories, etc.) and inductive reasoning to identify emergent themes.

A marked difference between constructivist grounded theory and earlier versions of the approach is that it emphasizes flexibility (Charmaz, 2014; Creswell & Poth, 2018). Additionally, constructivist grounded theorists make different assumptions than researchers using the Glaser and Strauss (1967) approach. Constructivist grounded

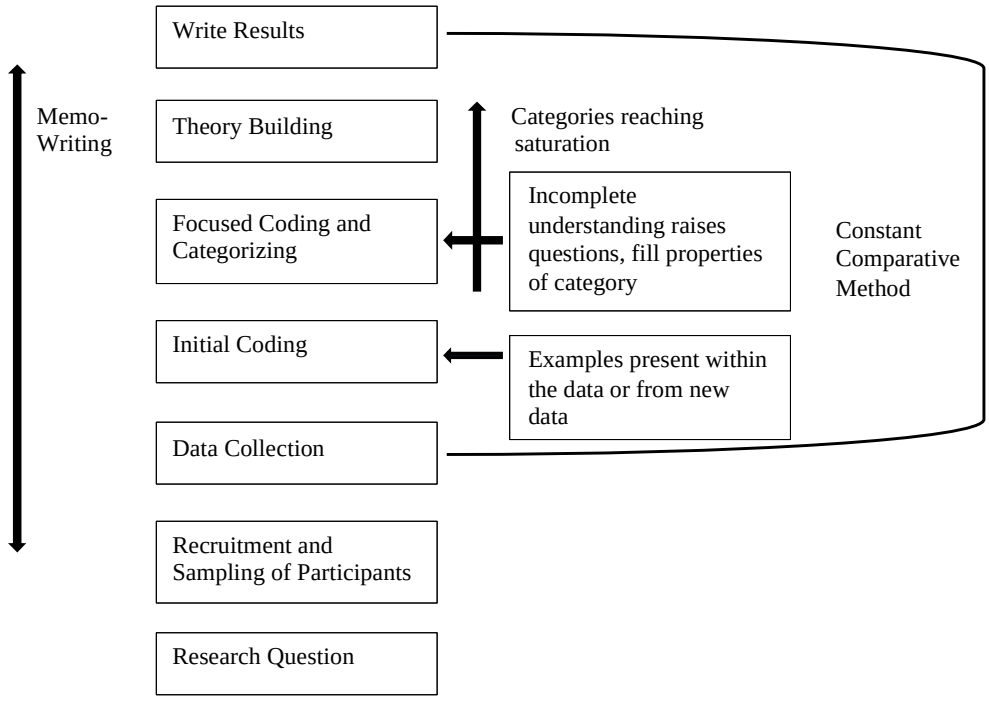
theorists recognize and acknowledge the inherent bias of any researcher and reject the idea of a completely neutral and value-free observer (Charmaz, 2001). They argue, instead, that the researcher records the world as the researcher best sees it, but not necessarily as a reflection of an underlying truth that has mystically arisen with the data and would be discovered regardless of who the researcher is. In fact, they argue the researcher will directly impact the data that is discovered and therefore the ultimate "truth" that is discovered from it. Different researcher, different data, different theory – this is a possibility recognized by the constructivist grounded theorist. In fact, Charmaz coined the "Constructivist Grounded Theory" and used "constructivist" "to acknowledge subjectivity and the researcher's involvement in the construction and interpretation of data" (Charmaz, 2014, p. 14). She advocated for an emphasis on the pragmatist roots of grounded theory, and argued that finished theories are constructions of reality rather than an exact reflection of it.

Although the reasoning used in constructivist grounded theory is frequently termed inductive – and that is accurate – it also uses a lesser-known form of reasoning termed "abductive reasoning." Abductive reasoning involves identifying the most plausible theoretical explanation from data by testing different possible explanations (Charmaz, 2017; Reichertz, J., 2009; Richardson, R., & Kramer, E. H., 2006). This requires moving back and forth between the data and possible theoretical explanations.

Charmaz's (2014) version of constructivist grounded theory emphasizes approaching the data without preconceived ideas and staying close to the data. Keeping in mind the process from beginning to end of a project is iterative and not linear, Charmaz recommends a process that moves from initially coding the data to focused coding to

theory construction. Creating memoranda, i.e., "memoing," to analyze data, codes, and connections between and among them is the key part of the analysis that leads to developing and constructing theory. Although memoing could be placed on a process timeline between focused coding and theory construction, it is in actuality a process that should be employed throughout the data collection and analysis process. Figure 2 provides a visual of the process as described by Charmaz (2014, p. 133) (crediting Allison Tweed for constructing figure for Tweed and Charmaz, 2001, p. 133).

Figure 2. A visual representation of grounded theory.



Explaining these steps in more detail, the first step in coding under the constructivist approach is initial coding. Initial codes should hew closely to the data, which may call for line-by-line coding. Charmaz (2014) recommends this occur quickly

and somewhat spontaneously, and that the researcher code as much as possible in order to leave all possible doors open for inquiry. Focused codes are a level of abstraction above initial codes. This involves identifying the themes and concepts that are suggested by the codes and the data on which the codes are based. Charmaz recommends looking for latent themes as well as express ones, and she describes this as an emergent process. It is often the case that initial codes become focused codes because of their significance and theoretical reach, and it is a misconception that a code must occur repeatedly in order to be emergent: "Not at all. If the code is telling, use it." (Charmaz, 2014, p. 145). This process of focused coding can also allow the researcher to discard with those codes that are off-point to the emerging, strongest themes. Memoing is a process that engages the researcher in analyzing the data and codes, and in so doing permits the researcher to make connections and develop theoretical categories. There is no mechanical formula for how a memo should be prepared. It is simply a process that permits the flow and creation of ideas about the project.

Constructivist Grounded Theory as Applied to this Dissertation

Data Collection

The research setting was Mississippi. Mississippi was selected as an ideal location for this research because it has been identified by Pew Charitable Trusts and others as a leader in enacting criminal justice reform measures, and therefore the results of this study should be informative to other researchers and policymakers implementing reform in other jurisdictions (Leins, 2019; Pew Charitable Trusts, 2017a).

Data collection occurred primarily through interviews, although some participants provided documentary evidence that was consulted when reviewing transcripts and

preparing memoranda. For interviews, purposive sampling was used in order to identify potential participants who were most likely to have relevant information (Charmaz, 2014; Creswell & Poth, 2018). The potential participants identified included state legislators, judges, prosecutors, public defenders, law enforcement, think tank policy analysts, public policy non-profit members, state-wide policy group members, and a former inmate. The persons who ultimately participated came from all of these categories and from all geographic parts of the state. In many interviews, snowball sampling was also used to identify additional persons who might have relevant information or to follow a particular lead or line of thought provided by a participant.

All participants were required to sign a consent form before the interview. This research began during the Covid-19 pandemic, and consistent with University protocol then in-existence for human subjects research, all interviews were conducted via Zoom. The interviews were recorded so that a transcript could be prepared. Only the researcher had access to the recordings and the transcripts and they were kept in a secure location in order to protect confidentiality. This research was approved by the Institutional Review Board (Appendix A).

Charmaz (2014) is of the view that there is no minimum number of persons who must be interviewed in order to have a reliable grounded theory. Rather, the researcher should continue the process of interviewing more and more persons until the data reaches a "saturation point," which is when new data no longer inspires new thoughts or connections relevant to the inquiry. As discussed by Charmaz (2014) and others, there is no bright-line test for when this point is reached, and it depends upon the good faith exercise of judgment by the researcher.

Thirty persons were invited by email to participate in an interview, and 19 agreed. One of the persons who agreed to an interview had to later cancel, with apologies, for fear that participation would result in answers that would jeopardize the person's employment. The first interview occurred on October 2, 2020, and the last on May 14, 2021. With 18 persons ultimately being interviewed, this resulted in a participation rate of 60%. The interviews lasted an average of 52 minutes with the shortest at 20 minutes and the longest at an hour and 39 minutes. Consistent with grounded theory, open-ended questions were used, and the researcher used a 10-question interview guide to provide structure to the process (Tewksbury, 2013). The guide can be seen at Appendix B. Attempts were made to elicit information in a way that would inform theory construction without coaching by the researcher (Schein, 1999).

The 18 participants can be grouped into five categories: policymakers, defenders, judges and administrators, prosecutors, and inmates. Some of the participants qualified for more than one category, and this is reflected in Table 1.

Table 1 *Participants by group categorization*

Type of Interviewee	Number	Percentage
Defenders	7	39%
Policymakers	7	39%
Judges & Administrators	5	28%
Prosecutors	4	20%
Inmates	1	5%

There were seven policymakers, and they consisted of think tank and interest group representatives, members of policymaking criminal justice groups or committees, and a state legislator. There were also seven defenders, and they consisted of current and former assistant and head public defenders. There were five judges and administrators,

and they consisted of current and former judges and persons who served in administrative capacities of some aspect of a program that is part of criminal justice reform. There were four current or former prosecutors, and they were assistant district attorneys in various parts of the state. There was one inmate, and he was housed at the Mississippi State Penitentiary, known as Parchman Farm or Parchman.

Data Analysis

Although the constructivist approach to grounded theory is iterative, it still loosely follows certain steps in an analysis process, beginning with data collection. Unlike other approaches where all data is collecting before analysis begins, analysis begins immediately with grounded theory so that it can inform future interviews and allow for the testing of tentative theories as they develop.

The researcher followed that approach here by reviewing transcripts and initially coding early in the process, as suggested by Charmaz (2014), to learn from the interviews and be advised of possible questions in future interviews. As suggested by Charmaz, gerunds were used for the initial codes because they give action and bring clarity to the concepts in the codes. The researcher also continually created memos and diagrammed connections between codes and concepts throughout the interviews and coding process. For example, the researcher generated as many as 18 memos and 36 networks in Atlas.ti to explore connections between and among codes and concepts. A reflexive journal was kept to record impressions during data collection and methodological challenges and successes, and a memo bank was also created to file and store all memoranda (Charmaz, 2014; Creswell & Poth, 2018; Lopez & Emmer, 2000). A triangulation process was used throughout the process by comparing interview results to information contained in

documents such as state legislation, reports of reform efforts, and academic studies (Lopez & Emmer, 2000). This process ultimately yielded 50 initial codes, which can be seen along with a definition for each in a codebook at Appendix C. Ten focused codes were then identified through this same analytical process from the 50 initial codes. These ten focused codes are described in the section detailing results. It was after focused codes were identified that the researcher went about formally constructing the theories described below, although these theories or portions of them were frequently tested on researchers throughout the interview process. An example of the coding process and how the researcher moved from quotations to initial code to focused code to theory can be seen in Appendix D.

CHAPTER IV – RESULTS

The 18 interviews that occurred from October of 2020 to May of 2021 involved participants who were grouped into five categories: policymakers, judges and administrators, prosecutors, defenders, and inmates. Fifty initial codes were assigned to the testimony in the transcripts of these interviews, and through the iterative process of analysis used in grounded theory, 10 focused codes were eventually identified from these initial codes. These focused codes were *clouding the data*; *creating requirements not in statutes*; *failing to buy-in*; *failing to reinvest savings*; *missing targets (people, programs, and places)*; *missing the mark, needing pre-trial reform*; *non-cooperating defendants*; *pricing people out*; *resisting institutions*; and *suffocating and overwhelming population*.

Focused Codes Discussed

Clouding the data

Clouding the data refers to a lack of access to data at the state or local level. Sometimes this is because data does not exist, while other times it is because it is not shared. Five codes gave rise to this focused code: *clouding the data, confusing inconsistency across jurisdictions, failing parts of drug courts, failing to reinvest savings*, and *needing oversight*.

Participants saw the lack of data to access as problematic in several ways. A primary one is the inability to adequately analyze policy without it. For example, one critique of reform shared by some participants is that it does not reduce the frequency of criminal activity. Rather, reform recharacterizes many offenses from felonies to misdemeanors and in so doing artificially decreases criminal counts that only record

felonies. So, for instance, it is not that people are not stealing with the same frequency, but that the amount they are stealing is no longer considered a felony. To the owner of a store, the theft is still a theft. It does not become less of a theft because the amount of money stolen was recharacterized from a felony to a misdemeanor. But, at present, participants claimed they did not have access to enough data to assess whether this concern is even a valid one.

An additional problem is that the recharacterization not only has the potential to artificially decrease crime rates, but it also potentially pushes the administrative handling of these cases from the state to local governments. This potentially overburdens local governmental entities such as municipal courts, justice courts, and county courts and jails and results in the type of "system overload" theorized by Bernard, Paoline, and Pare (2005). When this occurs, more cases enter the system than can be processed through it in a timely manner, and this causes a backward pressure throughout the local criminal justice system that results in an inefficient handling of cases.

Participants complained that a lack of access to data makes verifying the critique about overburdening local governments very difficult. One seasoned criminal defense lawyer who has been heavily involved in policymaking remarked:

> We just don't have good data right now on who's in our jail. But there was, there's been no evidence, and PEER tried to, because they kept bringing this up year after year that 585 pushed all of this down to the local level. But PEER looked at it, there was a provision that if the, if the local law enforcement could show an added cost, because of 585, they could get state reimbursement. And no one ever made that claim, because

> they just couldn't show that they were seeing increased jail time for people because they get pushed down because of these cases, they get pushed down as misdemeanors.
>
> ***
>
> There's no evidence that pushing them down to misdemeanors made them put a burden on the local governments. But we still hear that. When I've tried to bring up for discussion reclassification of simple possession and what they did in Oklahoma and make it a misdemeanor, we get the same thing that people there were saying: "Well, you know, that's going to burden the city court system or the Justice Court system." But I don't, you know, I don't know that that's going to happen, you know. And then there were others who said, "you know, well, if they're just misdemeanors, then they're definitely not going to agree to go to drug court. That's gonna really get fewer people in drug court, and that means we get less money for drug court."

Another veteran policymaker provided the following insight to this same theory:

> Remember a lot of things are now misdemeanors that used to be felonies. So once again, and I haven't seen any numbers on the impact that's having in local communities. But you remember there was some grumbling from law enforcement some time ago that all you're doing is sending your problems to us that these are going to be and the problem with that is the databases out there for ascertaining what's going on at the Justice Court

level and municipal court level and county court level are not that good. So it's really kind of hard to come up with something.

Another policymaker and defense lawyer responded as follows to a question of whether a lack of technology served as a barrier to data collection:

> But what we hear from [drug courts] is that some of it is technology. Some of it is, you know, the person, you've got to have somebody collecting the data, and reporting the data at the local level…we went to the legislature, NASS, the ASC, to collect data on indigency. How many lawyers, I mean, we literally, when we did a case study, we had to call every circuit clerk and then double check it with a court administrator to get a percentage of people who had public defenders, because there's not, there's no data collecting there. So there were some problems, I think, with the collecting and reporting from all of these various courts around, and then, you know, you do have to have the infrastructure there.

There is also the problem of criminal justice agencies not wanting to share information even when they have it. A policymaker and defense lawyer offered:

> I've got some nonprofits that I asked for some data on a project we're working on together, and you know, they're like, we got to, you know, all very polite, but, you know, I've got to get approval for that. You know, because everybody wants the final data report that says they're doing everything right. To go public, but they don't want to share the data on the front end without knowing the answer.

The lack of access to data is incredibly problematic because it cripples the ability criminal justice professionals, policymakers, researchers, and the public to systematically analyze data and render scientifically reliable judgments about whether policies are working as intended. For example, it is entirely possible that reform measures have overburdened lower courts at the municipal, justice, and county court levels, but it is also unknown because the data is not there to analyze. If reform has overburdened lower courts, that would mean reform has achieved the opposite of one of its intentions, which was to provide for the speedier resolution of criminal cases in line with the constitutional right to a speedy trial. Transparency is needed.

One final remark on transparency that came from a participant law enforcement officer who stated the following regarding body cameras:

> I'll tell you, for a police reform, body camera has been huge. And you know, nationally, it's been a great thing, you know, because not only are we capturing, you know, what exactly occurred, you know, whatever it is, a lot of times we're getting evidence for the crash or investigation. And then when you talk about complaints, there's been five more times than not, the person comes in and complains, watch the video, and it's not what happened.

Creating requirements not in statutes

Creating requirements not in statutes refers to extra-statutory requirements imposed on persons as part of their participation in a reform measure or program. These extra-statutory requirements make the reform measure or program more stringent or "narrow" in scope than intended such that fewer people qualify for participation or

completion. For example, according to participants, some drug courts imposed extra-statutory requirements on participants by adding unnecessary rules, and agencies promulgated regulations or adopted policies that constricted the reach of reform statutes such as those dealing with parole. This focused code was comprised of five codes: *creating requirements not in statutes*, *failing parts of drug courts*, *missing the target audience*, *needing oversight*, and *pricing people out*.

With respect to the extra-statutory requirements imposed by some drug courts, one policymaker and defense lawyer stated the following (the name of the particular county is redacted in order to protect the identity of the participant):

> The other thing that really bothered me, when I looked into _____County, is I asked them for copies of their rules and regulations and the individual rules that they had for people, some of them are just silly, like, you can't date without permission from the judge, can't get married without permission. Some of these things are unconstitutional.
>
> You can't wear jewelry. It was a bunch of just silly shit. The thing that really concerned me, and I think they've solved this problem now, but at the time, you couldn't be on any prescription medication, which meant that if you had a mental health issue, and a lot of people who struggle with addiction do, you had to come off of your medication. It's totally counterproductive.

This ability of some drug courts to impose extra-statutory requirements and veer away from best practices was attributed by one policymaker to a lack of needed oversight:

> So, under statute, the Supreme Court is charged with certifying local drug courts and ensuring that they're operating according to best practices. And there are a few people who are employed in the Supreme Court whose job it is to do that. They are governed by a drug court advisory board set up in statute, which is staffed by judges who obviously have an interest in whatever their interest is. And so they have not actually done what this actually has charged them with doing, which is visiting these local drug courts, ensuring that they're operating the way they should be, and shutting down the ones that aren't. And so you have, for instance, bad drug courts that aren't really helping anybody.

Earned discharge credits were an example of an agency adopting policies that constrict the reach of a reform statute to make it narrower than intended. Earned discharge credits enable those on supervision (probation or parole) to shorten their time through compliance with program requirements. According to a policymaker and defense lawyer, earned discharge credits arose in Mississippi because the federal government and many states, including Mississippi, took note that most problematic behavior by parolees and probationers occurred in first couple of years. Governments nationally reacted by reducing the maximum supervisory period that could be imposed on an offender to relieve the state of the burden of monitoring the person over a longer period than necessary and to relieve the person of the financial obligation. Mississippi already had a probation maximum of five years, which was not considered extraordinary. Therefore, the state took a slightly different approach, and a better one in the opinion of a policy maker and defender participant, by striking a balance with graduated sanctions for

supervision violations (the stick) and also earned discharge credits to reduce the supervision period with good behavior (the carrot). The participant reported that the state constricted the reach of this statute when it bent to pressures from prosecutors and local governments that needed the revenue stream from supervisees and discontinued earned discharge credits for some period of time after having adopted them. He qualified this observation, however, by stating he is not certain what the state is doing today. He described the situation as follows:

> But the first opposition we ran into, and I'm not sure what MDOC is doing today, but MDOC ultimately decided that they were going to not fight the prosecutors on this…Congressman Guest was the leader of this movement, when he was still a DA in Madison County…the problem that a lot of prosecutors saw and local governments…say, you know, when somebody gets sentenced, particularly to probation, they get loaded up with fines. And you can pay your fine over time…And the probation officer collects it. And so you've got this really good collection service, because the PO, they get the money, they turn it over to the county.…There was a lot of fear that, you know, if you let these people off probation earlier, then they're not going to pay their fines…And so they were trying to get the legislature to not allow earned discharge credits if the person was in arrears, on their fines and fees, and ultimately MDOC adopted a policy that said that they were not going to give out discharge credits. So it's sort of extended the amount of time people were on probation earned discharge credits.

A final example of *creating requirements not in statutes* involved judicial interpretation of the statute regarding technical violations of probation and parole. Criminal justice reform changed the law regarding revocation to apply graduated sanctions for supervision violations such that a first violation could result in 90 days in a Technical Violation Center (TVC), the second 120 days in a TVC, and the third the remainder of a sentence in prison. The intent was to prevent technical violations from quickly sending a person back to prison.

According to one policymaker and defense lawyer, some judges were interpreting the statute to allow them to "stack" technical violations that were part of one revocation hearing in order to sentence the person to the remainder of their time. This struck the participant as not consistent with the intent of the statute:

> So the other thing that judges started doing is what we called stacking before. Because of the way the statute was written where it said for your first technical violation you can get 90 days, rather than saying, for your first revocation for technical violations, people would come in and the judge would say, "Well, you didn't pay your supervision fee, you had a dirty test, and you failed to report for two weeks, that's 1, 2, 3 technical violations." And the way the law says is your first technical violation, it's 90 days, your second one 120. And your third, you can give the balance of the suspended sentence, the judges would just go 123, I'm sending you back to prison for the balance of your sentence.

According to the participant, this practice was ultimately appealed to and upheld by the Mississippi "Supreme Court, with what I thought was a relatively disingenuous

opinion. But not a completely unreasonable one, given the language of the statute." However, it was later remedied by the Mississippi Legislature with H.B. 387 where "they solved the problem. Now, the statute clearly says, you know, for your first revocation for one or more technical violations, maximum penalty is 90 days." This obstacle is noteworthy both for the fact it was an obstacle *and* that obstacles can be remedied later through the representative democratic process.

Failing to buy-in

Failing to buy-in refers to persons who influence the implementation of criminal justice matters and oppose reform or parts of reform because they philosophically disagree with it or are skeptical of it. It is comprised of twelve codes, i.e., *believing CJ reform should look different, believing in CJ goals that conflict with reform, creating requirements not in statutes, disagreeing with a reform measure, disagreeing with a program purpose, disagreeing with program substance, exercising racism, fearing crime, fearing people on drugs, ignoring reentry, misunderstanding reform,* and *viewing skeptically because of experience*.

One prosecutor succinctly captured two objections to reform by remarking that victims get lost in reform debates and reform often does not decrease the frequency of criminal incidents. It simply changes the way they are counted, a point discussed above.

> But right now, we're on defense, because they're trying to monkey with our habitual offender statutes, that's really the only hammer we have left. Keep in mind, in this whole thing, you know, all prosecutors who have to do this for a substantial amount of time really start to understand the victims get lost in all of this.

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> But, you know, if, if we want to change this, not just be talking, if we want to change, in my opinion, it doesn't happen by decriminalizing criminal activity. That's sort of like saying we've solved drunk driving by raising the blood alcohol limit to 2.3. You know, it's like, hey, DUIs have fallen off 90%. But there's still drugs out there on the road, you know what I mean?…So, you know, we don't need to decriminalize acts to solve the crime problem. In fact, that only harms the innocent people, that harms the people out there who haven't done anything to anyone. They become prey for these folks.

This prosecutor also voiced frustration that reform was misdirected towards the wrong ends, and that more meaningful reform would be directed towards recidivism. From his vantage point:

> Your question was, what obstacles exist in the implementation of criminal justice reform? And, again, this is just my opinion, but you know, that presumes that it's needed. And I'll talk more about that in a second. You know, to me, what needs to happen is to keep recidivism down and to keep the percentage of our population from being locked up that's currently locked up. That's the big thing to me. And so it takes many, many forms, but our criminal justice reform happens every year in the legislature, every single year. Could you say that the key is to keep the people that need locked up, locked up? No, no, the key is to prevent recidivism. And to not

have the percentage of our population incarcerated that's incarcerated now.

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So, you know, I think if people really, really want to make a difference, and really want to figure out what policies we can change, we've got to look at states that have implemented programs where recidivism is low. You talked about having some measurables. And I think you're going to find that what they're doing is they're investing in those prisoners in those citizens to be productive citizens when they get out. Now, are they all going to do it? No, you know. Are most going to do it? Probably not. But if we reach the quarter to half, I think it's worth the pain and suffering that we put our victims through, and the money we have to spend on housing when they offend again.

He finished discussing this topic with this sobering observation, but also reiterating that recidivism should be a focus. The name of the county has been redacted to protect the participant's identity:

But the problem that I've seen in my 20 something years is almost a sociological one, which I don't think can be handled through legislation. You look at Mississippi and all the stats, and we've got one of the highest percentages of our population incarcerated. We're probably one of the more poorly educated states, probably an extremely high percentage of our populations on some form of government assistance. We have a higher rate of poverty than most states. Higher percentage of single mothers,

> fathers not in their children's lives. Like I said, it's almost a sociological problem when you have that gumbo, all those ingredients for that gumbo. You're having folks that are going to commit crimes. And it's not black, it's not white. I mean, I'm down here in _____ County. There's not a black person down here. But it's all the same problems. It's a lack of education. It's meth everywhere. It's not getting trained up properly. So what I think, and I think other prosecutors do, is the biggest reform we can do is to help the felons before they get out.

To be clear, many actors within the criminal justice system *do* support reform efforts as a general matter, and this includes persons within the prosecutor group. One sheriff of a large county remarked:

> I think in a lot of cases, [criminal justice reform] is very, very helpful. Because here's, here's what I think that was changed that was not only helpful but needed, right. And it's like I mentioned before, throw somebody away for 25 years on an auto felony, misdemeanor, marijuana, whatever, I think is a waste of time and space. A crack dealer, a crystal meth dealer, they really impact the community. I don't think weed smokers impact the community…I think part of the reason why we're in this particular shape with criminal justice reform is because back in the 80s, prior to me, and when I don't remember. If my recollection is correct, they did something called the 85% rule. Something like that. Right. So if you if you committed a crime and with a gun, you were required to do 85% or your time. And also, if my recollection is correct, probably about

> five, six years after that, it's my recollection the population of Mississippi Department of Corrections went up, probably 50-60%. So now you're stuck with all these folks doing sentences. And when you're doing this legislation, I don't think you're thinking about where are you going with medical and all these other costs that occur when your incarceration rates goes up. So I think it was situation back then where I think the general consensus was, let's just show everybody how hard we can be on criminals. But as a corporate cost, incarceration long term is a very complex issue that people really need to totally digest. So I am just saying this, I think that it turned into a monster. Now it costs a lot of money.

The fact that there are actors within the criminal justice system who oppose and support reform simultaneously demonstrates the complex nature of the environment and difficulty of reducing everyone's viewpoint to a single current of thought. The important point for purposes of identifying obstacles to implementation is that even if there are numerous actors within the system that support reform, the various components of the criminal justice system are disconnected enough that those who oppose reform are often able to hinder the implementation of different aspects of it. Additionally, even among those who generally support reform, the reasons for their support vary and this may result in varying degrees of support or opposition for specific components of reform.

Failing to reinvest savings

Failing to reinvest savings captures the idea that the legislature has failed to reinvest financial savings from reform and this has hindered full implementation of different reform programs and policies, such as drug courts and mental health measures.

This focused code was comprised of *failing parts of drug courts, failing to reinvest savings, non-cooperating defendants, pricing people out, starving for dollars,* and *suffocating and overwhelming population*.

A recurring theme among participants about the varying wish-list programs that could be financed is that there is not enough money available: "The [] thing we run into is that there's no, there's no real funding out there in Mississippi for any of this," according to a judge and former prosecutor, or "once again, money is always a constraint," according to a policymaker. According to some participants, at least some of these programs could be financed if savings were redirected to them.

A policymaker was succinct:

> One of the assumptions behind 585 was that any money we saved from corrections would be reinvested in the community and community-based programs. And one of the things that we're concerned about on the taskforce is that we're not seeing reinvestment.

Another policymaker and judge was straight to the point:

> So the biggest complaint I've heard about 585, was that we, we realized the savings, um, because we had less people under the care of the state. But we've never reinvested the monies from 585 that we realized. And so we've continued to cut MDOC's budget, but we haven't increased their budget for programming, which we could have done because we realized the savings because of it.

He added that while reform legislation did not mandate savings be reinvested, it would be a prudent use of tax dollars and would also be exercising fidelity to how reform legislation was marketed, providing in part:

> I don't think they were tied [to reinvesting] by law. I think it was more the way we sold those programs was saying we're going to save money, and we ought to reinvest that in programming. The legislature increasingly does not like to do things to tie their own hands. They like to have every year freedom to make decisions about how they allocate money. And so I just I think that's probably what happened. I'd be surprised if there was actually a legal requirement that they reinvest the money.

Another policymaker and defense lawyer had thoughts on the particular uses of any reinvestment dollars:

> Justice reinvestment that was a big thing, you know, we're going to save this money. But we don't want to save it and put it in the general fund or do a tax rebate, we want to invest it. And so the thing is, is that some people thought reinvestment meant reinvesting in other aspects of the Department of Corrections. And there was some truth to that. There needed to be, there needed to be a shift from institution to community corrections. We needed to spend more money on community. I think the TVC is a justice reinvestment program.
>
> Most of that reentry work, and most of that justice reinvestment needs to go to our mental health system, the community mental health system, the unconstitutional system that we have, according to Carlton

> Reeves. It's, we knew, you know, we knew a lot of people coming into the criminal justice system, because they have mental health problems, a lot of people getting out of prison, who have mental health problems. So when we improve the community mental health centers, that's justice reinvestment, that's, that's, you know, a recidivism reduction program.

Yet another policymaker remarked on the difficult politics involved in redirecting savings and coupled the observation with a potential solution going forward:

> The state spends a lot of money from a percentage basis on corrections already. And it's a tough sell to argue for reinvestment and any sort of reentry programming. Drug court, I think, has the money, that comes back to an administration problem. But yeah, it can be tough to get the funding you need for some of this stuff. But, you know, with, with the right mindset, the Department of Corrections, if we could actually implement some more sentencing reform to allow them to decrease their population, you could redirect a lot of the funding they have now to better uses than just hiring more guards.

The idea at which he was driving is that so much money is already dedicated to corrections, even post-reform with savings, that it is difficult to convince lawmakers to take those savings and keep them in the corrections field for a treatment-preventative purpose. The idea he was pushing is that we need more sentencing reform, or full implementation of sentencing reforms that have already been enacted. Implicit in this idea is that further population reduction will take us below some yet-to-be-defined threshold of total spending that will then make it politically possible to make the case that

savings should be reinvested into criminal justice related programs. Until that happens, at least according to this participant's perspective, it may be difficult to make the political case for reinvested spending even if that means it serves as an obstacle to full implementation of some programs and policies.

Missing targets (people, programs, and places)

Missing targets (people, programs, and places) has several dimensions and refers to the idea that policies are missing the population to which they are directed, are directed towards the wrong population, are using the wrong programs for the population, or are hosted at the wrong location. It is comprised of eight codes: *delaying on TVCs*, *failing parts of drug courts*, *lacking programming substance*, *lacking systematic or scientific rigor*, *locating programs in the wrong environment*, *missing marks on revocation reform*, *missing the target audience*, and *needing oversight*.

TVCs were a primary example of missing a target by locating a program in the wrong location until the problem was eventually corrected. A policymaker and defender observed:

> The first setback for [TVCs] that we had was then under Commissioner Epps. He had a plan. The plan, for whatever reason, was he going to put the technical violation center over in Leake County on some land that the state had near the Walnut Grove facility. And when they, for whatever reason, they couldn't get a state-local agreement going and they ended up not putting it there and they wanted to get it started so they just put it in at CMCF, and they just repurposed some of the area. And the first, the first task force, we went a year before the taskforce started meeting, one of the

first things we did was go visit the TVC. And it was just ridiculous. They had, they had one large room, which was the classroom, and they had it partitioned. And you had four classes going at the same time. And it just, it wasn't, it was just a holding place for 90 days that they got some lectures and, and it took some time, but eventually, the department, and this is one of the things that I think Commissioner Hall did really well, was focused on getting the TVC up to what it was supposed to be where people would go for 90 days, get some intense job training, or maybe it's drug and alcohol. But instead of sending them to Parchman for the AMD treatment, that's really not any good, they had them going through this program. And you know, the one thing we haven't seen, we haven't looked at data on the outcomes of TVC, since it got set up in Delta correctional. But after a couple of visits there, especially for those of us who went on that first visit, you know, it was night and day. And there's a lot, a lot of hope there that that program is working.

Another policymaker commented on this issue of the wrong location for TVCs, as well as how TVCs continue to elude portions of the target population as a viable alternative to reincarceration:

I think, initially, there were a lot of problems with the TVCs, and that they just looked more like jails than anything else. And, you know, the intent of those is to actually be more of a halfway house type situation. I think they do look more like that now. There's a lot we could talk about what Commissioner Hall did wrong at the Department of Corrections. I think

> that's one of the things that they did right was improve the TVCs. And so I think that's a little better. There's a bigger issue, and that relates to how people end up there and why they end up there. MDOC still has a large amount of discretion about how they apply these, you know, technical violations for people who are on parole. Judges, and even the parole board, in some instances, end up revoking people and sending them back to prison for a lot of times what should be actually considered technical violations, or they do so without actually holding a hearing and given the due process that's required when somebody is accused of committing a new crime while they're on parole. That is a problem still. It was one of the things that was supposed to be addressed by 585. It is undoubtedly better today than it was pre-585. But there's still a lot of people who are going straight back to prison on parole violations or probation violations, where, you know, there's some subset, probably less than 50%, but around that number, who maybe shouldn't be going back to prison and maybe should be going to a technical violation center, or maybe shouldn't be violated at all.

Yet another issue appears to be a delay in persons reaching a TVC. According to a policymaker and defender:

> Another big problem they had at the beginning is the person gets arrested, they sit in jail for weeks or sometimes months, then they go through classification. And several months later, they finally end up at the TVC.

> And you really miss the opportunity to get this person turned around and ready to get back out on the street.

Said another defender:

> I have very few clients that even make it up there. They spend 90 days in jail. Or 120 days in the county jail because there's not enough, they're not transporting enough people due to COVID concerns, which understand that the idea of a TVC is good, I guess…I don't feel like people get there fast enough.

One dimension of this focused code is using the wrong program for a population. Consistent with this dimension, and in-line with a prosecutor's observations above in the focused code *failing to buy-in* about more focus needed on recidivism, the same prosecutor observed:

> If I could wave a magic wand, and it's not going to happen because it costs too much money, is we have, like, in their last year of, you know, in prison needs to be in some sort of vo-tech halfway house, some sort of job skill program that really can help them get a job.

TVCs were not the only program that received attention from participants. So too, for example, did drug courts, which some participants believed missed targets by admitting too many non-addicts as a get-out-of-jail free card or as a means to generate revenue. According to a policymaker,

> I will tell you what, I've seen more reformers who are no longer supportive of drug court because of the data that's coming out a lot of these places. And so you see, and then this goes back to why drug courts

> are supposed to operate and how they actually operate. The point is to address people with serious addiction issues that are leading them to crime. But because of the fee structure that we talked about, and just the discretion that comes to judges and prosecutors about who to get in there, um, so for instance, if you get caught breaking into somebody's house to steal, to feed your drug habit, um, you're probably less likely to get accepted into drug court than somebody who just gets caught with marijuana. So if you look at, and part of that is the incentive where judges and prosecutors say well, that's more serious, you know, you need to go to prison for that, when in reality the point, the point of drug court is to address those very people whose addictions are so severe, they're creating public safety problems. Um, but in reality, you know, a lot of people are just getting in there who don't really have, don't really have a drug problem. If you have a college kid that gets caught with marijuana, it's unlikely they're going to create problems for the state long term, like statistics.

All of these dimensions to *missing targets (people, programs, and places*) serve as obstacles to implementation in different ways and for different lengths of time.

Missing the mark, needing pre-trial reform

Missing the mark, needing pre-trial reform refers to the idea that reform efforts to date have missed a major area of needed change, which is making changes necessary to reduce the amount of time a person spends in jail before trial. This focused code is less

about failing to implement a specific statute than it is reform legislation failing to address a problem that is routinely recognized by reform advocates. In this sense, part of the spirit of reform has not been implemented. It is significant because it raises constitutional concerns and therefore it is discussed here. Additionally, it was voiced strongly as an issue by a sheriff of a large county. It is comprised of the codes *believing CJ reform should look differently* and *missing the mark, needing pre-trial reform*.

An interview with the previously mentioned sheriff crystalized this focused code, although other participants voiced opinions that supported it in varying ways and to varying degrees. The sheriff, grouped into the code group prosecutors, remarked:

> What I would like to see, though, is more attention paid to what happens pre-trial. Right. And I guess because it's in our best interest as a department to look at that. And I would like to see more done. Like we got people down in the detention center now who have been down there more than 1000 days. Right. Which I think according to the Constitution, that's a clear violation, you know, speedy trial, promise that you get as an American citizen. So that, that part there is problem, is lack of governance. The biggest problem that we face is just trying to get these people through to justice. And we don't have control over that. So the criminal justice reform, most of the parts that I hear, it has to do with people that are already incarcerated…I'd like to see more with pre-trial detainees.

These pre-trial delays were attributed to several factors. In some instances, it could simply be judges or prosecutors not moving cases along as speedily as they could. This might be due to a lack of diligence, while it might be due to case overload and the

need for more judges, prosecutors, and defenders. Some of the delay also might be out of the control of judges, prosecutors, and defenders. These factors out of their control include delays in mental health evaluations that are backlogged in the mental health system but necessary for trial, or delays in crime laboratory reports that are backlogged in the state crime laboratory and are necessary for some prosecutions, particularly homicides. While the diligence of public officials may be harder to address through legislation than at the ballot box, legislation and legislative funding can address staffing shortages and issues related to delays in mental health evaluations and crime laboratory reports.

The sheriff continued, with the name of the county redacted in order to protect the identity of the participant:

> [I]n a lot of cases, there are certain individuals like right now, it's about 125 people that we got down in the [jail], that are that are waiting for mental evaluations…So how does that relate to your question about criminal justice reform? Most of the time, when I hear people talking about it, they're talking about going back and looking at people who have been sentenced.
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> ***
>
> And another thing on a state level that the legislature could do to help _____ County, in particular with their criminal justice system, is I mean, we need more judges…to handle this huge docket…they need to statutorily change their allotment of judges for _____ County…because I mean, if you think about it, we have people that are in our jail for three

> years, before they even see a trial. Mississippi does not even care about speedy trial or nearly a speedy trial. So they're in our system technically innocent. Which I mean, you know, the rate of recidivism, if, if you're in a jail for one day to three days, I mean, it goes up exponentially as to whether or not you're going to come back. So we're basically manufacturing criminals.

This focused code of *missing the mark, needing pre-trial reform* captures an important concept of needing to bring the accused to justice in a reasonably prompt fashion to guarantee speedy trial rights, and even beyond fulfilling constitutional guarantees, to provide for a more efficient and effective justice system. Allowing these problems to linger serves as an obstacle to the implementation of the spirit of reform, which widely embraces the view that pre-trial delays are too long and often extreme.

Non-cooperating defendants

Non-cooperating defendants refers to persons who choose not to participate in reform programs for one a reason or another, such as a personal calculation that serving time will be less onerous than compliance with a reform program's requirements. The codes comprising this focused code were *creating requirements not in statutes, failing to reinvest savings*, *non-cooperating defendants*, and *pricing people out.*

This focused code was most frequently described by participants when discussing drug courts. The idea articulated was that some defendants make personal decisions not to participate in drug courts because they believe the requirements are more onerous than other alternatives, even serving time. The point here is not to render a value judgement of

whether these conclusions reached by defendants are reasonable under the circumstances, but to note these conclusions are reached, reasonable or not.

A prosecutor observed:

> They're kind of smart, too. They know how much times over their head, and they can figure it out. If they got two years left on drug court, I mean, they don't like it. You can't have any fun. You can't drink. You can't do anything. You've got to work. You have to be in bed at a certain time. You have to wear ankle monitors and all that. No one wants it. Because if they got two years of drug court to finish and they've got three years over their head suspended, they'll just go to the judge and tell them give me my time. They'd rather go to a year in prison or less than to do two years of having to live like drug court.

This was put to a follow-up question: "There really are people who would rather do that?" Answer: "Yes, there's a lot of people like that. And they know, they can calculate in their head."

An administrator and defender explained how this can work (with the county name redacted to protect the participant's identity):

> This is another aspect of drug courts - why I don't send my clients there. You know, _____ County is notorious for lenient sentences. I don't know if that's necessarily true. I think the volume – there's no other option, there's just no other option. But if I'm facing, say, an auto burglary. Okay. The maximum for auto burglary seven years. Well, if I'm in drug court, I can be in drug court for a five full years, right. Okay. Well,

> if you want, I mean, this is an extreme, I've never heard someone say, "well, I want to do the seven years on auto burglary versus drug court." But you would, logically, you would, because seven years, 25% of that seven years is what? A year and eight months, a year and seven months, and then you're out.
>
> This participant, who was very familiar with drug court best practices, added:
>
> And that goes back to how long should a drug court be. The science is very clear. We should be sitting at 18 months to two years. Well, that's not what the drug courts do in Mississippi [which is typically five years].

Some participant defenders perceived a pronounced reticence to participate in drug courts from black defendants. They theorized there is a commonly shared belief among this demographic group that drug court is the quickest way to prison because it is too easy to run afoul of what are perceived as too many rules and regulations. This was articulated by a defender during his interview (with the county name redacted to protect the participant's identity):

> I mean, and I'll say that it is, to me, it's still this way amongst the black community, probably in either jurisdiction [describing two neighboring counties], the quickest way to get to prison is to go to drug court… I've had a numerous clients, and you'll hear it, it doesn't matter black or white, but I know that I've, the times I would hear it are more from a black parent or our older sibling or uncle or you know, some kind of person going to a drug court. I mean, that's quick, so I get stuck in prison. And it's because you have all these hoops to jump through. And it's hard. I

> mean it is in _____ County. The reason I think that it was not recommended or that we did not encourage our clients to do it is because if they qualified for the public defender's office, they were struggling financially and it required some financial means

There is overlap between this focused code and another focused code, *pricing people out*. They are distinct enough that a decision was made that using different focused codes representing each was justified because participants discussed numerous situations where defendants did not cooperate for reasons unrelated to money. Sometimes the decision not to participate or comply with a reform measure is about outright defiance rather than a calculation of how onerous a reform measure may be. As told by a judge and former prosecutor:

> The one that stands out, in my mind the most. I had a young guy, tracking firearms, which is a minimum of 15 years. He got a non-adjudication. And I'll never forget the probation officer standing up there saying, "I told him come, you know, when can you come see? You name the day. You name the time and I'll be here." Guy just wouldn't come. And then the guy pops off and he says, "Well, I'm clean, I haven't been smoking weed." And I told him "I don't care. I don't care about your smoking marijuana. But what I care about is you're able to get to your dealer to buy weed, but you can't get up here to probation." You know, I mean, that's a problem. And he didn't show up for nine months.

That person went from a non-adjudicated sentence to serving 15 years in prison.

This focused code may not seem intuitive or be the first obstacle that comes to mind, but data from participant-interviewees indicates that reticence from potential reform program participants can itself serve as an obstacle to implementation. This speaks to a need to either adjust some program requirements or convince more people to take advantage of reform programs, or both.

Pricing people out

Pricing people out refers to when some persons are priced-out of participating in reform programs because they cannot afford the fees. It is comprised of the codes *exercising racism*, *failing parts of drug courts*, *needing oversight*, and *pricing people out*. There is overlap between this focused code and the focused codes *failing to invest savings* and *non-cooperating defendants*, discussed above.

Drug courts were a primary example of a reform program that not all potential participants can afford. Drug courts vary considerably from county to county because individual drug courts have significant discretion in precisely how they are run and financed. Some drug courts offer very affordable or largely free participation while others do not. There were two main observations from participants about the effect of those drug courts where participation is relatively costly: (1) not all who need it can afford it, and therefore potential participants pursue other avenues when otherwise they would be an ideal drug court candidate, and (2) this financial barrier falls more heavily on the black population than others. Participants pointed to the demographics of drug court participants as supporting this second conclusion.

For example, a policymaker stated the following:

There are huge racial disparities. You are much more likely to get into drug court if you are white. If you look at counties that have a pretty equal balance racially, you'll see most people who get charged with drug offenses are African American. There's a huge disparity there. You see more people charged with drug offenses from the African American community. That's not new. But when you look at the people who make it to drug court, it's completely flipped. I mean, it's like 60% white people who get into drug court, and a lot of that is just a reflection of poverty. You have to pay to get into drug court. In Mississippi, you have monthly fees. You have to pay for all your testing that you have to do. If you can't afford it, then you're not in. Some drug courts managed to make that more equitable by, you know, the judges get to operate this fund however they choose. And so a lot of them use it to cover their expenses, and create scholarships with what's left to allow folks who can't afford it to get in. Some don't do that and sit on the money or spend it for other reasons. In my mind, this is a prime example of what the Supreme Court should be doing and going in and saying, hey, look, if your numbers don't reflect the people who are actually charged with these offenses, then you're opening yourself up to a federal lawsuit for you know, an equal protection violation which has been threatened over this. But the Supreme Court is not doing that. They're shackled by the advisory board that's run by judges. And I think the only reason there hasn't been a lawsuit about this,

> because it's a pretty clear problem. And you're, you're precluding someone from getting a benefit solely based on their economic situation. And so the only reason that hasn't been filed, I believe, is because they don't want to shut down drug courts completely, because we recognize that it does help some people.

Another policymaker and defender had similar remarks:

> 585 gave [drug courts] a bunch more money because they weren't giving them enough money to begin with. So again, the state money and started with some requirements of them using best practices and implementing some standards. And then as we looked at it over the next couple of yours, the eye opener for me was when we got them to report to us the data that they're supposed to report every year. There was, I think it was 63% of the people in drug court were white. And, you know, people who've studied drug abuse know, you're as likely to use drugs, maybe slightly more likely, but about the same white or black. We're all doing drugs. And, and, you know, we know, there's, maybe because of policing practices, and it's just, you know, if you're doing them hanging out on the street corner, as opposed to doing them in your living room, you're more likely to get arrested. So, so there's some statistical changes, things that come into play that explain why in Mississippi we've got slightly more black people than white people getting arrested for drugs. But then you turn around and look at 63% of people in drug court. And nobody could explain that. And I think that when you when you start looking at drug court and finding out

> all the fees, some of them were mandatory. They've made a way put a waiver in giving the judge authority to waive fees. There were people that if you had the money to pay for your assessment, you pay to get in. If you need to and can pay for treatment, and then you could get in drug court. And if you couldn't do that, then you couldn't get in drug court. So it wasn't a thing that drug court administrators were saying, you know, we don't like black people. We're not going to let you in. It was all the system was built up in a way that it was just going to be impossible for most of the black defendants to get in.

These observations crystalized how fees can serve as an obstacle to persons participating in reform programs when otherwise they might be ideal candidates. As noted above, there is considerable thematic overlap between this focused code and *failing to reinvest savings* and *non-cooperating defendants*. The overlap with *failing to reinvest savings* is that savings could be redirected into programs such as drug courts so that persons who are otherwise unable to pay fees could participate. Similarly, the overlap with *non-cooperating defendants* is that many of these defendants do not cooperate and participate for the very reason that they cannot afford to, and if the savings were reinvested and therefore these persons were made able to afford to participate, then some percentage of these non-cooperative defendants would presumably become cooperating ones.

Resisting institutions

Resisting institutions refers to sectors or institutions within the criminal justice apparatus opposing a reform. It was comprised of the fourteen codes *believing in CJ*

goals that conflict with reform, believing CJ reform should look differently, creating requirements not in statutes, curtailing judicial discretion, curtailing prosecutorial discretion, misunderstanding reform, disagreeing with a reform measure, disagreeing with program purpose, disagreeing with program substance, misunderstanding reform, politicking and perceptions of political power, protecting their financial interests, protecting turf, resisting institutions, and *viewing skeptically because of experience*.

Participants most commonly mentioned opposition to reform from prosecutors and law enforcement, with judges also being mentioned frequently. According to one policymaker:

> I would say the biggest constituency that's opposed to almost all this stuff, all this stuff is the prosecutors and district attorneys. You know, they generally are reflexively against any sort of criminal justice reform that comes out of the legislature or is considered by the legislature. They're very active in lobbying. They're at the Capitol every day during the session. And they're the ones who are really the leading constituency against this.

This viewpoint was reiterated by two other policymakers. Said one in response to a question about obstacles to implementation he had seen:

> The prosecutors. So the law enforcement community has this paradigm where, you know, initially, they say, look, we don't make the laws, we enforce the laws. But that's totally not true. They are, law enforcement, especially the lobbyist for the prosecutors and the Sheriffs Association. The Chiefs of Police don't seem to matter as much because they're not an

> elected position. Like the chiefs of places, you know, anyway, they just don't have, the Chiefs of Police don't have the same sort of political stroke that the prosecutors and the sheriffs do. The sheriff is obviously a very politically powerful position because it's an elected official in a county and the prosecutor because the prosecutors are elected as well.

Said another policymaker:

> I generally think it is so ingrained in law enforcement and prosecutors, the way they've been doing it. I don't really think they see that there's a problem. Um, I, the way they resist change every single year to every single reform with very few exceptions.

According to this same policymaker, much of this opposition is based on reform making prosecution more difficult:

> I mean, there's just a practical reason that I'd also argue that they have more of an incentive for, not for nothing to change in the criminal justice system, but they stand to lose the most by any sort of sentencing reforms, because it just, frankly, makes their jobs harder. If you have, if you have a huge mandatory sentence to hold over someone's head, it makes it much easier to get a guilty plea right then than if they have parole eligibility, and, you know, maybe they're willing to roll the dice and actually go to trial, if the sentence is not that tough. And so you have, I'm sure you're familiar with the trial penalty, where, you know, outcomes are worse for folks who choose to exercise their right to a trial. And so I think that's at the heart of it. That's, that's where a lot of this opposition comes from.

> And so you see, prosecutors being the leading voice against a lot of reform, because they just, from an incentive perspective, you know, just makes their jobs harder.

According to another policymaker, the political power of the prosecutor and law enforcement community is leveraged by law-and-order constituencies:

> That's what, that's what a lot of this comes down to is that, you know, there's a, there's a constituency of people who are just reflexively against any sort of criminal justice reform. Within the legislature, I think those are pretty small, outside, but they're able to leverage, they're able to leverage some powerful interest groups, like law enforcement and sheriffs onto their side. And, and that's kind of, that's the tension that exists.

A prosecutor participant shared the following regarding opposition to reform, but he characterized the opposition as defense and noted prosecutors and sheriffs are the ones who see criminals the most:

> Every year we have to fight. We have an agenda, the prosecutors' association, that we push that we want to see happen. And we're usually lockstep with the Sheriffs' Association. You know, the two groups that really see the criminals the most. And so, like right now, the last few years, we've been on defense. That's what we're having to do. It's all money driven. And the 585 changes that happened, it did affect MDOC, but not to the extent they wanted it to. They're still, you know, packed in there. And it just didn't save the money they were hoping so they keeping pushing for more and more things.

But prosecutors are not always against reform measures. According to the same prosecutor quoted above:

> And what it, what [585] did, the whole goal was, as you know, was to get people out of MDOC, or at least get them out of prison. They can still be supervised and things like that. But it was cost driven. And we in the Prosecutors' Association fought this, law enforcement, sheriff's departments, they all fought it. We were able to get rid of some things. But this was kind of shoved down our throats. And I have to admit, you know, now after six, seven years of this, I like it, I like it a lot. It's much more fair [continuing on to discuss that sentencing reductions and parole eligibility at 25% for nonviolent offenses and 50% for violent offenses were more fair].

The code *misunderstanding reform* was relevant to this focused code as demonstrated by a policymaker when stating:

> I think a lot of these sheriffs and police chiefs, when you sit down and actually go through, you know, the actual content of these policies and what they're intended to do and how they're implemented, you don't meet a lot of objection. I think that they are leveraged by a lot of people who are just opposed to it in any form. And so that's, that's a lot of the tension at play for sure.

Judges were also noted as hindering aspects of reform. For example, one policymaker and defender discussed opposition from judges to reform regarding parole, revocation, and the new use of graduated sanctions and TVCs:

> The thing that I want to emphasize is that judges are continuing to find ways to get around these graduated penalties of 90 days, 120 days, and then the balance of this suspended sentence.

Prosecutorial and judicial resistance was most frequently associated with limits on discretion, and interviews revealed that opposition to the actual implementation of specific reform measures was often associated with some type of financial interest. Interviews also revealed that many prosecutors were not opposed to some aspects of reform once it was more fully understood, but there also appear to be philosophical divides on some points for which it will be difficult to bridge the divide between a more law and order-oriented constituency and a reform one. Where the groups prosecutors and judges and administrators can and do serve as obstacles to implementation is through exercising power to constrict the reach of reform statutes within their sphere of influence.

Suffocating and overwhelming population

Suffocating and overwhelming population refers to a population too large for a policy or program to be implemented successfully. It is composed of codes *overloading probation and parole officers, suffocating and overwhelming population size*, and *failure to reinvest savings*.

Probation and parole was the primary example. A participant from the judges and administrators group identified the probation and parole population as entirely too large for any probation or parole officer to have any realistic chance of providing adequate services:

> I'll be frank, you want to talk about something doesn't work: probation. Probation and parole don't work. It does not work. It's a mathematical

> impossibility. I mean, I don't pick on my probation and parole agents, but if you run the math, I would be curious how many people each agent is assigned to supervise. It has to be hundreds. It has to be in the hundreds if you just look at the population that is technically on parole or probation…But I mean, if you just look, if you say you have 300, 400 people on your docket as an agent, that you have to get reports for them every month, and there's only 20 working days in a month, you're talking 20 people per day. On average. Probation really is you just show up, you sign a piece of paper. That's probation. Is that a deterrent? I mean, I end up revoking a lot of people, though, because they don't show up to sign a piece of paper. And I mean, you know, I tell them on the front end, I'm like, this is the easiest thing ever. You literally show up. I can't revoke you because you can't pay. I mean, that's against the law. You got to show up and say "present."

He later added about probation and parole officers:

> I wouldn't do it. I wouldn't do it. I mean, I'm just gonna be frank, it's, it's the worst job in law enforcement, other than being a prison guard. Other than being a prison guard, it's the worst job in law enforcement in my opinion.

When suffocating and overwhelming populations are present, it serves as an obstacle to implementation. There is overlap between this focused code and *failure to reinvest savings* because arguably some savings could be redirected towards programs such as probation and parole. This money could be used to increase the pay and number

of officers, which in turn could increase the amount of time each officer dedicates to each person and the quality of service provided to those serving supervisory sentences.

Between Group Comparison of Participant Groups

The five groups into which participants were categorized were policymakers, judges and administrators, prosecutors, defenders, and inmates. After identifying focused codes from all of the testimony of all of the participants, the frequency with which these focused codes could be identified in the testimony of specific participant groups was also determined. These were then rank ordered for each participant group by frequency. Although constructivist grounded theory holds the frequency with which a code is identified is not determinative of its ultimate significance in the larger picture, an inference can be made that a topic is likely important if it is discussed repeatedly by various participants. Below is a discussion of top three focused codes identified by each group, and then a comparison of each group by these top three.

Top Three Focused Codes by Group

Policymakers. The top three focused codes discussed by policymakers were *failing to buy-in, resisting institutions*, and *missing targets (people, programs, and places),* as shown in Table 2. *Failing to buy-in* was discussed 81 times, *resisting institutions* 66 times, and *missing targets (people, programs, and places)* 53 times. Other top focused codes discussed by policymakers included *missing the mark, needing pre-trial reform* (30 times), *failing to reinvest savings* (29 times), *creating requirements not in statutes* (27 times), *pricing people out* (27 times), *non-cooperating defendants* (20 times), *clouding the data* (13 times), and *suffocating and overwhelming population* (12 times).

Table 2 *Focused codes by policymakers*

	Policymakers
Failing to buy-in	81
Resisting institutions	66
Missing targets (people, programs, and places)	53
Missing the mark, needing pre-trial reform	30
Failing to reinvest savings	29
Creating requirements not in statutes	27
Pricing people out	27
Non-cooperating defendants	20
Clouding the data	13
Suffocating and overwhelming population	12
Totals	358

Prosecutors. The top three focused codes discussed by prosecutors were *resisting institutions*, *failing to buy-in*, and *missing targets (people, programs, and places)*, as shown in Table 3. *Resisting institutions* was discussed 31 times, *failing to buy-in* 19 times, and *missing targets (people, programs, and places)* 17 times. Other top focused codes discussed by policymakers included *suffocating and overwhelming population* (14 times), *pricing people out* (11 times), *creating requirements not in statutes* (11 times), *failing to reinvest savings* (8 times), *missing the mark, needing pre-trial reform* (8 times), *non-cooperating defendants* (5 times), and *clouding the data* (4 times).

Table 3 *Focused codes by prosecutors*

	Prosecutors
Resisting institutions	31
Failing to buy-in	19
Missing targets (people, programs, and places)	17
Suffocating and overwhelming population	14
Pricing people out	11
Creating requirements not in statutes	11
Failing to reinvest savings	8
Missing the mark, needing pre-trial reform	8
Non-cooperating defendants	5
Clouding the data	4
Totals	128

Defenders. The top three focused codes discussed by defendants were *missing targets (people, programs, and places)*, *resisting institutions*, and *failing to buy-in*, as shown in Table 4. *Missing targets (people, programs, and places)* and *resisting institutions* were both discussed 57 times, and *failing to buy-in* was discussed 47 times. Other top focused codes discussed by policymakers included *failing to reinvest savings* (31 times), *pricing people out* (31 times), *creating requirements not in statutes* (29 times), *non-cooperating defendants* (29 times), *clouding the data* (15 times), *missing the mark, needing pre-trial reform* (11 times), and *suffocating and overwhelming population* (7 times).

Table 4 *Focused codes by defenders*

	Defenders
Missing targets (people, programs, and places)	57
Resisting institutions	57
Failing to buy-in	47
Failing to reinvest savings	31
Pricing people out	31
Creating requirements not in statutes	29
Non-cooperating defendants	29
Clouding the data	15
Missing the mark, needing pre-trial reform	11
Suffocating and overwhelming population	7
Totals	314

Judges & Administrators. The top three focused codes discussed by judges and administrators were *resisting institutions*, *failing to reinvest savings*, and *missing targets (people, programs, and places)*, as shown in Table 5. *Resisting institutions* was discussed 27 times, *failing to reinvest savings* 21 times, and *missing targets (people, programs, and places)* 19 times. Other top focused codes discussed by policymakers included *clouding the data* (18 times), *failing to buy-in* (18 times), pricing people out (18 times), *creating requirements not in statutes* (16 times), *non-cooperating defendants* (14 times), *missing the mark, needing pre-trial reform* (12 times), and *suffocating and overwhelming population* (12 times).

Table 5 *Focused codes by judges and administrators*

	Judges & Administrators
Resisting institutions	28
Failing to reinvest savings	21
Missing targets (people, programs, and places)	19
Clouding the data	18
Failing to buy-in	18
Pricing people out	18
Creating requirements not in statutes	16
Non-cooperating defendants	14
Missing the mark, needing pre-trial reform	12
Suffocating and overwhelming population	12
Totals	176

Inmates. The top three focused codes discussed by the participant-inmate were *failing to buy-in*, *missing the mark, needing pre-trial reform*, and *missing targets (people, programs, and places)*, as shown in Table 6. *Failing to buy-in* was discussed four times, *missing the mark, needing pre-trial reform* three times, and *missing targets (people, programs, and places)* and *suffocating and overwhelming population* were both mentioned twice.

Table 6 *Focused codes by inmate*

	Inmates
Failing to buy-in	4
Missing the mark, needing pre-trial reform	3
Missing targets (people, programs, and places)	2
Suffocating and overwhelming population	2
Clouding the data	0
Creating requirements not in statutes	0
Failing to reinvest savings	0
Non-cooperating defendants	0
Pricing people out	0
Resisting institutions	0
Totals	11

Comparison of the Top Focused Codes Identified by Group

Having identified the top three focused codes identified by each group, it is possible to compare the groups to one another. This is shown in Table 7. Five of the focused codes, i.e., *clouding the data*, *creating requirements not in statutes*, *non-cooperating defendants*, *pricing people out*, and *suffocating and overwhelming populations* were not discussed with enough frequency by of the participants groups to make a top three, although according to Charmaz (2014) this should not be dispositive of a focused code's importance.

Table 7 *Comparison of groups by top three focused codes*

Focused Code	Code Group
Clouding the data	
Creating requirements not in statutes	
Failing to buy-in	Defenders Policymakers Prosecutors Inmates
Failing to reinvest savings	Judges and Administrators
Missing targets (people, programs, and places)	Defenders Judges and Administrators Policymakers Prosecutors Inmates
Missing the mark, needing pre-trial reform	Inmates
Non-cooperating defendants	
Pricing people out	
Resisting institutions	Defenders Judges and Administrators Policymakers Prosecutors
Suffocating and overwhelming population	

Policymakers, prosecutors, and defenders share the same top three, i.e., *failing to buy-in*, *resisting institutions*, and *missing targets (people, programs, and places)*, but the frequency with which each group discussed these three differed. For example, policymakers discussed *failing to buy-in* the most, prosecutors *resisting institutions*, and defenders *missing targets (people, programs, and places)*. Based on characterizations of each professional group, it is not difficult to theorize why these would be the top focused code for each group. Policymakers would be likely take a global view and ascribe reform resistance to those who "don't understand" or simply do not believe in it. Prosecutors

would be likely to resist as an institution because they have the most to lose through the implementation of reforms that diminish their negotiating power with criminal defendants. Defenders would be likely to believe in reform generally but also believe reforms are missing the mark in some way based upon what they are seeing at the ground level.

Like policymakers, prosecutors, and defenders, the testimony of judges and administrators contained *resisting institutions* and *missing targets (people, programs, and places)* with enough frequency to be two of the top three focused codes for the group. However, judges and administrators differed from the other three groups by discussing *failing to reinvest savings* with enough frequency to have it as the other top focused code instead of *failing to buy-in*. Notably, *failing to reinvest savings* was identified by all participant groups with the exception of the one inmate interviewed. It ranked fifth among policymakers, seventh among prosecutors, and fourth among defenders (see Tables 2-6). The inmate participant differed from all of the groups by discussing *missing the mark, needing pre-trial reform* with enough frequency to place it among his top three.

Again, with constructivist grounded theory the frequency with which a focused code is discussed is not determinative of whether it is the most important. However, frequency can supply at least an inference that something important is occurring, and frequencies are identified above for the purpose of highlighting topics which appear to be important because they continued to arise in conversation.

Articulation of Theories

The purpose of this study was to build a grounded theory or theories that identify and explain obstacles to the implementation of criminal justice reform. Consistent with this purpose, seven theories have been developed by identifying themes underlying and linking the focused codes discussed above. These seven are (1) *failure to convince*, (2) *failure to hit targets*, (3) *failure to exercise fidelity to statutory language*, (4) *failure to make data accessible*, (5) *failure to reinvest*, (6) *failure to make programs affordable*, and (7) *failure to address pre-trial problems*. These theories are not listed in order of importance. Additionally, one theory was identified that potentially had the most explanatory power for capturing implementation obstacles in Mississippi. That theory is *failure to exercise fidelity to statutory language*.

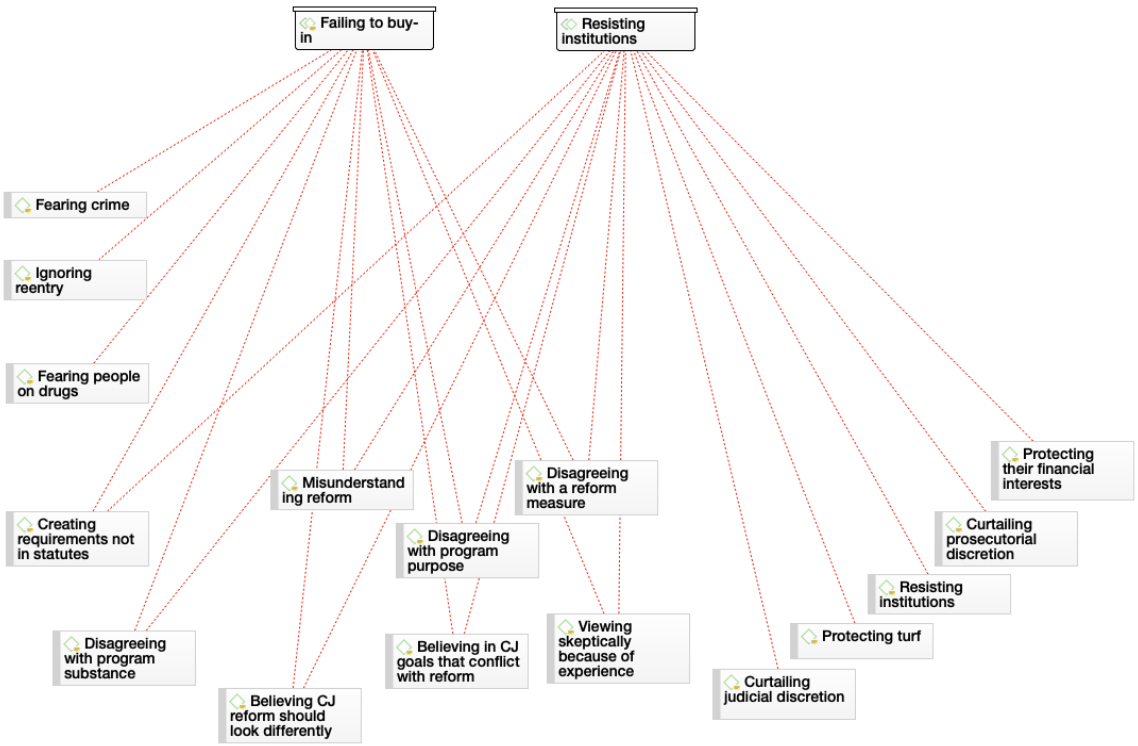
Theory 1: Failure to convince

Failing to convince persons with power of the necessity or benefit of reform will result in persons and potentially institutions hindering implementation. This may seem obvious, but it is worth articulating and amplifying because resistant individuals can and do impede implementation. It is one thing for a reform measure to pass the legislature with the majority required for passage. It is quite another for that measure to be implemented by someone far removed from the legislature who may not agree with reform and would have voted against it.

The constructs for this theory can be seen in Figure 3. For figure and the other figures used below that were created using Atlas.ti (Figure 3 – 9), a box with two diamonds represents a focused code, while a box with one diamond represents an initial code. The two primary focused codes from which the theory is formed are *failing to buy-*

in and *resisting institutions*. Both contribute to a failure to convince some persons of the benefit of reform and thereby contribute to their hindering its implementation in some way. The initial codes falling underneath those two focused codes that are pertinent to the theory can also be in Figure 3. As can be seen, some of the initial codes are tied directly to both focused codes, while other initial codes are tied directly to one focused code only. *Failing to buy*-in and *resisting institutions* shared the initial codes *believing in CJ goals that conflict with reform*, *believing CJ reform should look differently, creating requirements not in statutes, disagreeing with program purpose, disagreeing with program substance, disagreeing with a reform measure, misunderstanding reform, and viewing skeptically because of experience*. The initial codes that were tied directly to *failing to buy-in* only were *fearing crime*, *ignoring reentry*, and *fearing people on drugs*. The initial codes that were tied directly to *resisting institutions* only were *protecting their financial interests*, *curtailing prosecutorial discretion*, *resisting institutions*, *protecting turf*, and *curtailing judicial discretion*. All of them relate in some way and degree to the Theory of a Failure to Convince.

Figure 3. Constructs for the Theory of Failure to Convince.



In a sense this theory may serve to ratify that which people intuitively know to be true, i.e., a failure to convince people of the benefit of reform will result in them serving as an obstacle to it. However, it deserves mention and amplification because it is ubiquitous.

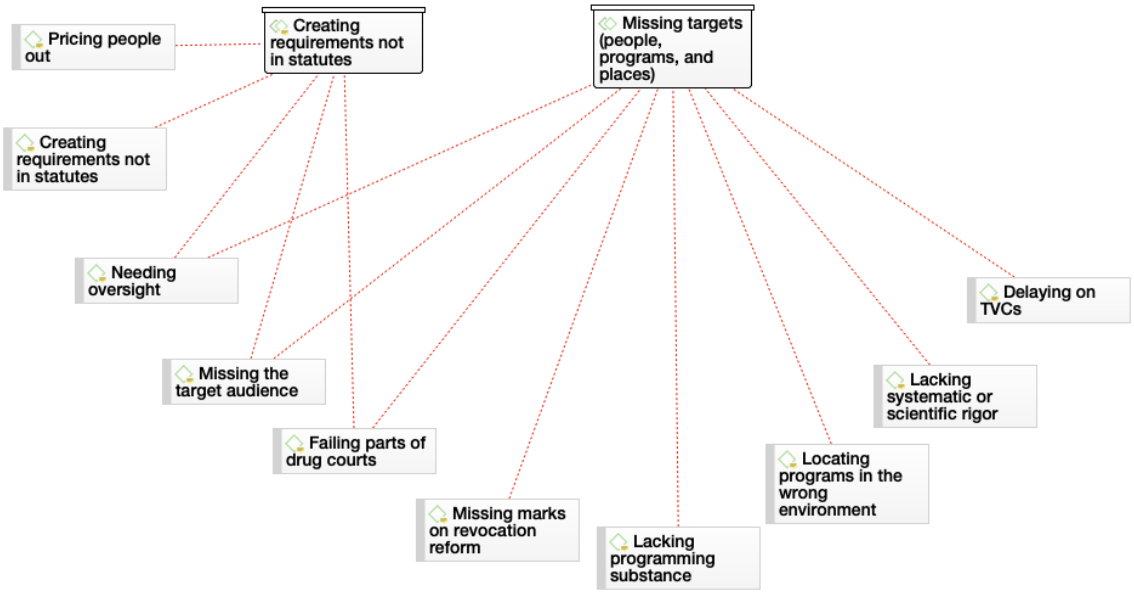
Theory 2: Failure to hit targets

Sometimes reform policies and programs are directed towards the wrong people, use the wrong programs, or are enacted at the wrong location. Whichever circumstance applies, targets are missed and it will serve as an obstacle to implementation. Specific examples illustrate how this theory works in practice. Housing TVCs in prisons, as discussed above, is a perfect example of enacting a reform program at the wrong location and thereby hindering full implementation. Sending non-addicts or persons without

substance use disorders to drug courts is an example of applying a reform program to the wrong people. This has the potential effect of not only taking spaces from those for whom the program is intended, but also shifting the very focus of the program from a serious rehabilitation program to a way station of sorts for those solely looking for an expungement and clearing a record. Use of the wrong programs was less discussed by participants, but one example that did arise was the inmate participant's discussion of alcohol and dependency treatment in prison, which he believed to be inadequate. These examples illustrate how missing targets is an obstacle.

The constructs for this theory can be seen in Figure 4. This theory is based primarily on the focused codes *creating requirements not in statutes* and *missing targets (people, programs, and places)*. The initial codes associated with the focused codes and relevant to the theory are also shown. The two focused codes share the initial codes *needing oversight*, *meeting the target audience*, and *failing parts of drug courts*. The initial codes *creating requirements not in statutes* and *pricing people out* were associated directly with the focused code *creating requirements not in statutes* only, while the initial codes *delaying on TVCs*, *missing marks on revocation reform*, *lacking programming substance*, *locating programs in the wrong environment*, and *lacking systematic or scientific rigor* were associated with *missing targets (people, programs, and places)* only.

Figure 4. Constructs for the Theory of Failure to Hit Targets.



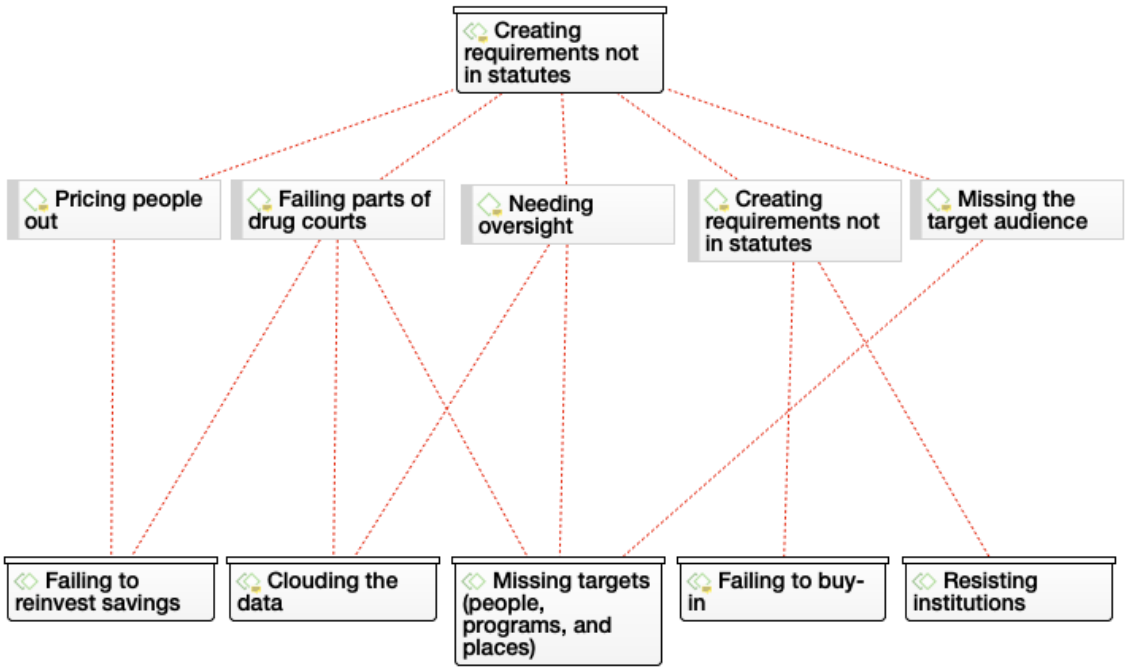
Theory 3: Failure to exercise fidelity to statutory language

Requirements are sometimes imposed on persons during their participation in a reform measure or program when the requirements are not found in the statute. When a person with authority exercises his or her power to constrict the reach of a reform statute so that it is narrower than intended by the Legislature, this is a failure to exercise fidelity to statutory language. Examples of this included judges who "stacked" violations in creative ways in order to trigger revocations to prison, drug court judges who imposed requirements on participants regarding personal medication, and earned discharge credits that at least for a time were reportedly not made available to those serving supervisory sentences.

The constructs for this theory can be seen in Figure 5. This theory finds its foundation first and foremost in the focused code *creating requirements not in statutes*, but it also received strong support from the focused codes *clouding the data*, *failing to*

buy-in, failing to reinvest savings, missing targets (people, places, and programs), and *resisting institutions*.

Figure 5. Constructs for the Theory of Failure to Exercise Fidelity to Statutory Language.



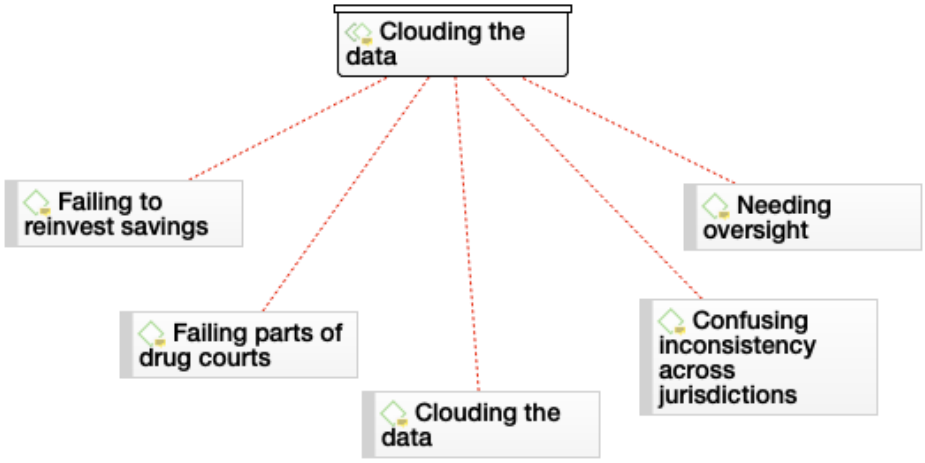
There can be overlap between the different theories set forth in this dissertation, and that is certainly the case between this theory and others such as the *failure to convince*, *failure to hit targets*, and *failure to make data available*. It is likely the case that many of the very persons who impose extra-statutory requirements are also persons who have not been entirely convinced of the merits of reform, that a failure to exercise fidelity to statutory language can result in targeting programs to the wrong populations or housing programs in the wrong locations, and that the inability of the public to access data has enabled some actors to hinder implementation.

Theory 4: Failure to make data accessible

You cannot improve what you cannot measure. Consistent with that oft-repeated phrase, it is difficult to implement policy well or improve upon it when implementation cannot be measured, and implementation cannot be measured without data. As stated and repeated by participants in this research, much data that would be useful is in fact not accessible, either by design or because recordkeeping practices or technology do not make it possible. Such was the case with claims that reform drove the administrative handling of criminal activity from the state to local governments and in the process overloaded local systems. It was difficult to impossible for participants to ever assess the validity of those claims because they lacked the data to do so. Regardless of why data is not accessible, the lack of it serves as an obstacle to implementation. To more fully implement reform, any jurisdiction overseeing it should look for ways to record data and make it available.

The constructs for this theory can be seen in Figure 6. The theory arises directly from the focused code *clouding the data*. The initial codes underlying the focused code are *clouding the data*, *confusing inconsistency across jurisdictions*, *failing parts of drug courts*, *failing to reinvest savings*, and *needing oversight*.

Figure 6. Constructs for the Theory of Failure to Make Data Accessible.



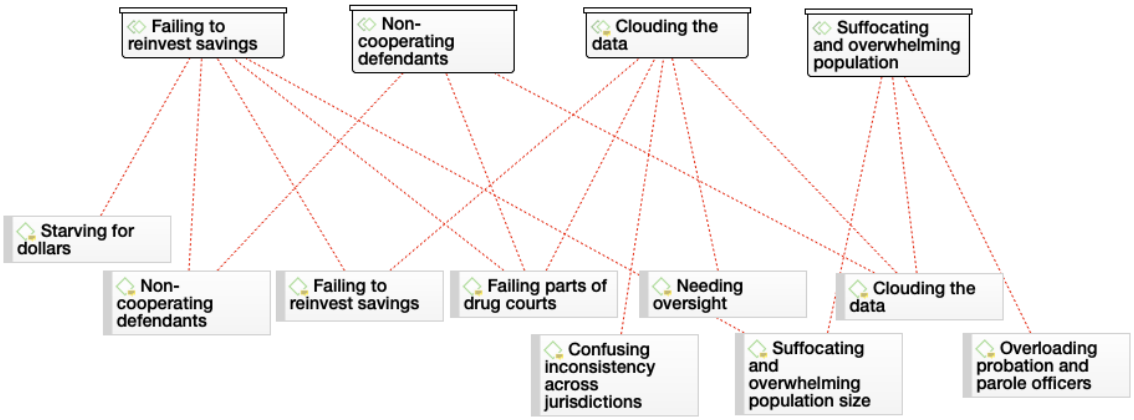
Theory 5: Failure to reinvest

This theory is built directly from the focused code *failing to reinvest savings*. The focused code is based on the idea the state should be taking savings realized as a result of reforms and reinvesting them into criminal justice related programs. The theory is that the failure to do so has prevented full implementation of reform measures, and examples abound of where savings realized from reform could be reinvested into the system. For example, some persons cannot participate in drug court programs because of fees. Savings realized from reform could be redirected to reform efforts such as drug courts so that all or at least more can participate. Other examples of where funds could be reinvested include reentry and inmate training, the number and pay of probation and parole officers, and addressing mental health care needs that often overlap with criminal justice matters.

The constructs for this theory can be seen in Figure 7. While this theory arises directly from the focused code *failing to reinvest* savings, it is also finds strong support from *clouding the data*, *non-cooperating defendants*, and *suffocating and overwhelming*

population. Inability to access and review data may be preventing reinvestment that might occur if it were accessible to be used to make a case for the prudential use of taxpayer dollars through reinvestment, such as reinvestment to address unaffordable fees that sometimes result in non-cooperating defendants and issues associated with supervising large parole and probation populations.

Figure 7. Constructs for the Theory of Failure to Reinvest.



The initial codes that are associated with these focused codes and relevant to this theory are also included in Figure 7. There is considerable overlap between the initial codes assigned to each focused code. A straightforward listing is that the focused code *failing to reinvest savings* is associated with the initial codes *failing to reinvest savings*, *failing parts of drug courts*, *non-cooperating defendants*, *starving for dollars*, and *suffocating and overwhelming population*. The focused code *non-cooperating defendants* is associated with *clouding the data*, *failing parts of drug courts*, and *non-cooperating defendants*. The focused code *clouding the data* is associated with *clouding the data*, *confusing inconsistency across jurisdictions*, *failing parts of drug courts*, *failing to reinvest savings*, and *needing oversight*. Finally, the focused code *suffocating and overwhelming population* is associated with the initial codes *clouding the data*,

overloading probation and parole officers, and *suffocating and overwhelming population*.

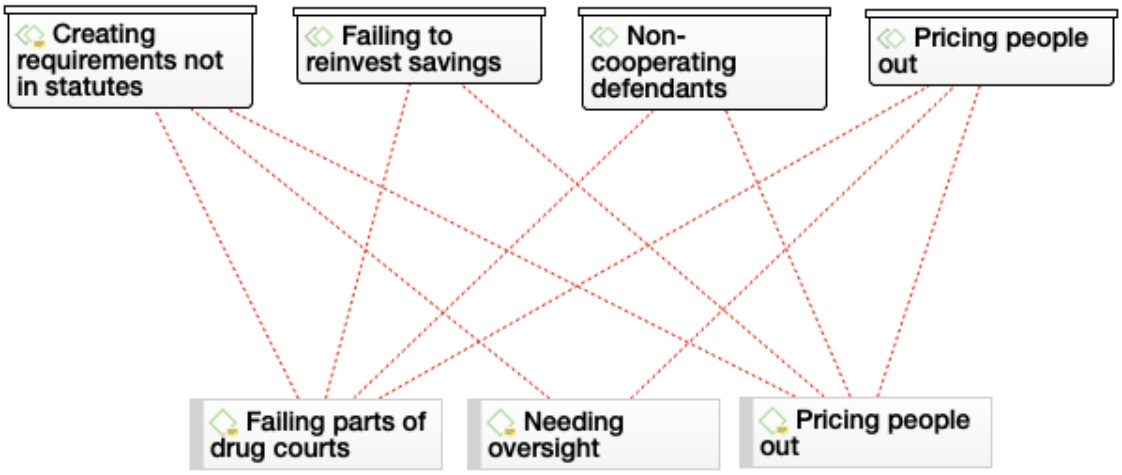
Note that one policymaker opined that politically it will be very difficult to successfully argue that money should be reinvested in treatment-preventative programs. This is because even after savings realized from reform and decreased allocations to MDOC over the past several years, it is still the case that MDOC receives a substantial amount of money each year as a share of the state budget. This was one reason why he advocated for more sentencing reform as a means to further reduce the size of the incarcerated population and perhaps then save enough that a better case can be made for reinvestment.

Theory 6: Failure to make programs affordable

Reform will not be fully implemented if potential participants cannot enroll in programs because of cost-prohibitive fees. According to participants, such has been the case in Mississippi with reform programs such as some drug courts. One intent of criminal justice reform is to decrease the likelihood a person will reoffend through participation in applicable programs. This intent is not dependent upon economic class such that only the more well-to-do are intended to benefit from reform. In reality, however, reform participation becomes dependent upon economic class when fees are unaffordable to significant segments of the population. Programs of course have costs, and these costs have to be recouped from somewhere. This is where this theory overlaps with the Theory of a Failure to Reinvest. Reinvesting could be addressed to programs that are currently unaffordable to some by subsidizing their participation with savings realized from reform.

The constructs for this theory can be seen in Figure 8. The theory is grounded in the focused codes *creating requirements not in statutes*, *failing to reinvest savings*, *non-cooperating defendants*, and *pricing people out*. The focused code *creating requirements not in statute* is associated with initial codes *failing parts of drug courts*, *needing oversight*, and *pricing people out.* The focused code *failing to reinvest savings* is associated with the initial codes *failing parts of drug courts* and *pricing people out*. The focused code *non-cooperating defendants* is associated with the initial codes *failing parts of drug courts* and *pricing people out*. As with the focused code *creating requirements not in statutes*, the final focused code of *pricing people out* is associated with the initial codes *failing parts of drug courts*, *needing oversight*, and *pricing people out*. To dispel the thought that these two focused codes are measuring precisely the same thing, only the initial codes relevant to this particular theory are included in the figure below.

Figure 8. Constructs for the Theory of Failure to Make Programs Affordable.



Theory 7: Failure to address pre-trial problems

Pre-trial problems remain unaddressed by reform according to participants. These problems include lengthy waits for trial, which themselves are sometimes caused by lengthy waits for mental evaluations or crime laboratory reports. This results in a large number of persons who are housed in county jails awaiting trial, and it causes a number of problems downstream in the criminal justice process. It is the corkscrew at the top of the bottle that is causing pressure throughout, and it should be addressed. Unlike the other theories, this theory does not deal directly with a statute that has been enacted and blocked from implementation. Rather, it deals with an area that is serving as an obstacle to the implementation of many other reform measures that address other parts of the criminal justice process that are downstream from pre-trial delays.

The constructs for this theory can be seen in Figure 9. The theory is grounded in the focused code *missing the mark, needing pre-trial reform*. The focused code is built from the initial codes *missing the mark, need reform for pre-trial issues for speedy trial guarantee* and *believing CJ reform should look differently*.

Figure 9. Constructs for the Theory of Failure to Address Pre-Trial Problems.

Overarching Theory as Applied in MS

This dissertation sought to answer the following questions:

Central Question:

Are there obstacles to the implementation of criminal justice reform legislation?

Research Sub-questions:

1. What are the obstacles?
2. How do these obstacles function?
3. Why are they there?
4. Why are they allowed to persist?

The main question was posed because the researcher did not want to presume there are obstacles, although it was expected there would be. Every participant in the study confirmed they exist. As to the first two sub-questions of "what are the obstacles" and "how to do these obstacles function," the 10 focused codes answer these questions. These codes (*clouding the data*; *creating requirements not in statutes*; *failing to buy-in*; *failing to reinvest savings*; *missing targets (people, programs, and places)*; *missing the*

mark, needing pre-trial reform; *non-cooperating defendants*; *pricing people out*; *resisting institutions*; and *suffocating and overwhelming population*) identify what the obstacles are and the discussions above about the codes explain how they function. As to the last two sub-questions of "why are they there" and "why are they allowed to persist," the seven theories developed from the 10 focused codes answer these questions. These theories (the *failure to convince, failure to hit targets, failure to exercise fidelity to statutory language, failure to make data accessible, failure to reinvest, failure to make programs affordable,* and *failure to address pre-trial problems*) explain why the obstacles are there and answer why they are allowed to persist.

This information can be synthesized into one overarching theory that potentially has more explanatory power for obstacles in Mississippi than any alternative theory. That theory is the *failure to exercise fidelity to statutory language*. Participants observed this occurring in numerous places, e.g., drug courts with extra-statutory requirements, earned discharge credits, parole violations triggering a return to prison instead of a TVC, programs housed at incorrect locations, and programs targeted to incorrect populations. Reform programs were applied incorrectly or in some instances were not applied at all. Notably, however, there were several instances where implementation failures were identified and corrected. The initial poor TVC location is a primary example. Initially, the TVC was housed in a prison and this is precisely the place where it is *not* supposed to be held. However, the facility was relocated to a community setting as intended by the statute after a visit to the facility by the 585 Task Force and a change in MDOC Commissioners. This serves as an example of how policy implementation is dynamic instead of static and can course-correct over time.

This overarching theory arises directly from the individual theory of *failure to exercise fidelity to statutory language*, but other individual theories such as *failure to convince*, *failure to hit targets*, *failure to reinvest*, and *failure to make programs affordable* overlap with and contribute to the problem of not always adhering to statutory language or intent. Additionally, it is also supported by several top focused codes identified by participants, such as *failing to buy-in*, *failing to reinvest*, *missing targets (people, places, and programs)*, and *resisting institutions*. This theory more than any other appears to explain implementation failures in those areas where they exist.

Several visuals help conceptualize this overarching theory and how it functions at the ground level. Figure 10 illustrates a situation where a statute creates a reform program and its requirements. Later, at the implementation phase, a judge or some other government official imposes requirements on program participants that are not in the statute or even contemplated by the statute through delegation. Drug courts were an easy example of this for participants to discuss because there have been situations over time where judges have imposed requirements on participants that had no statutory basis, such as bans on dating and taking prescription medications for issues such as depression. This, in effect, narrows the reach of the program to a smaller audience than intended by the legislature, and this obviously narrows the number of persons who could be positively impacted by such a program.

Figure 10. Extra-statutory requirements that burden participation in programs.

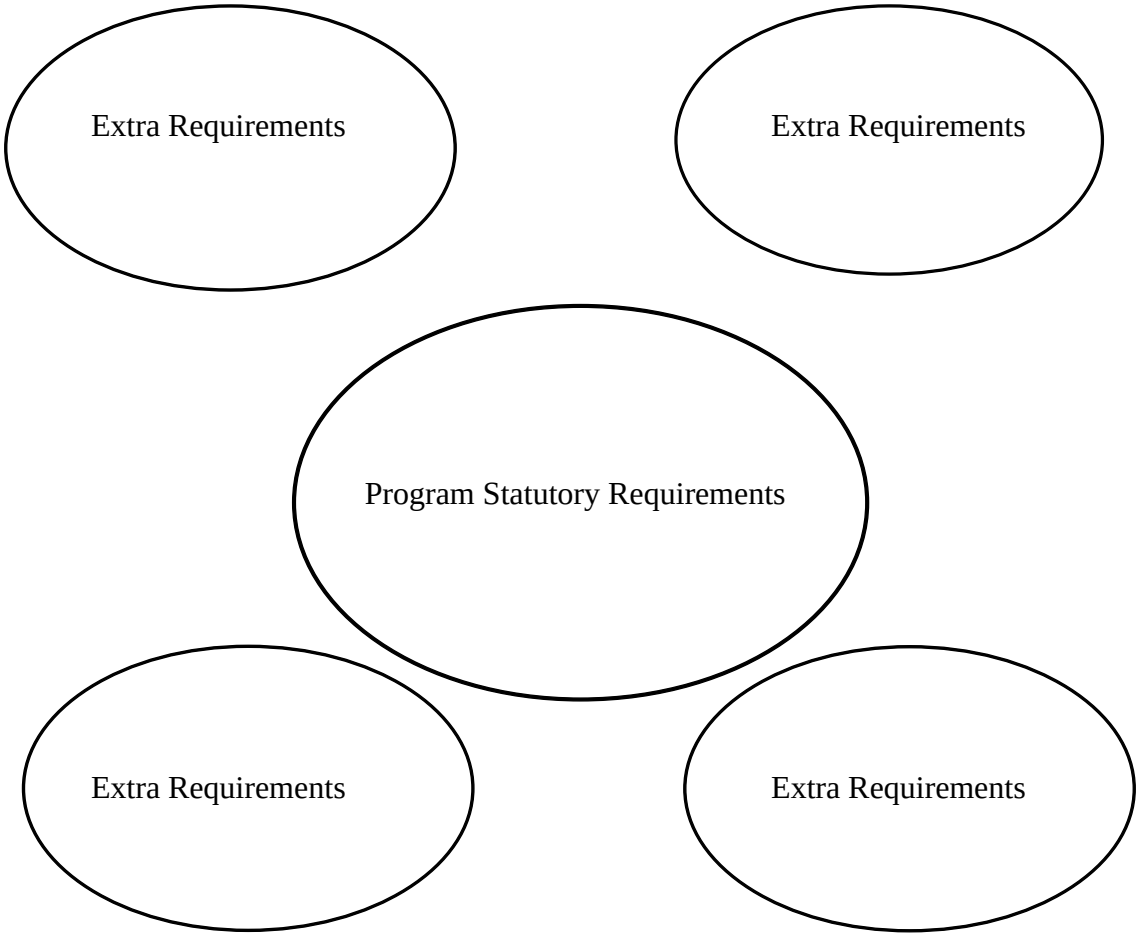
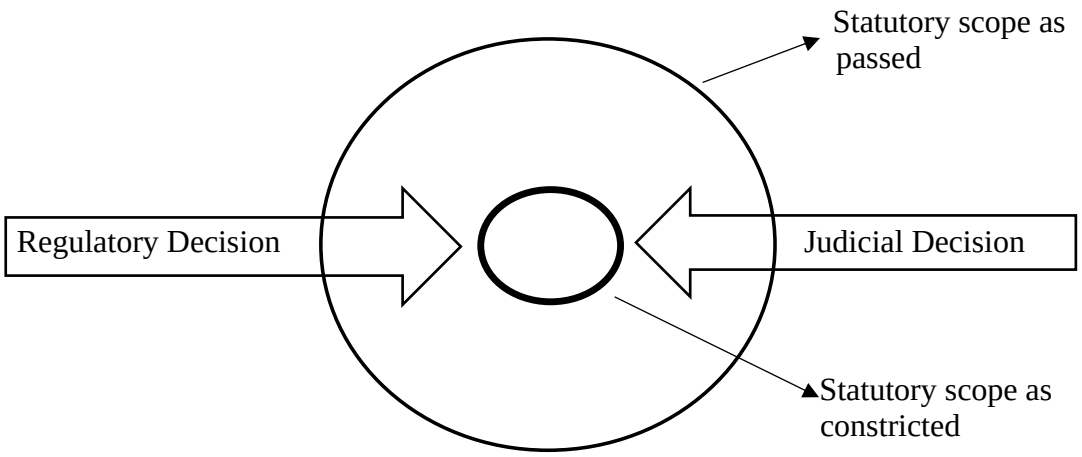


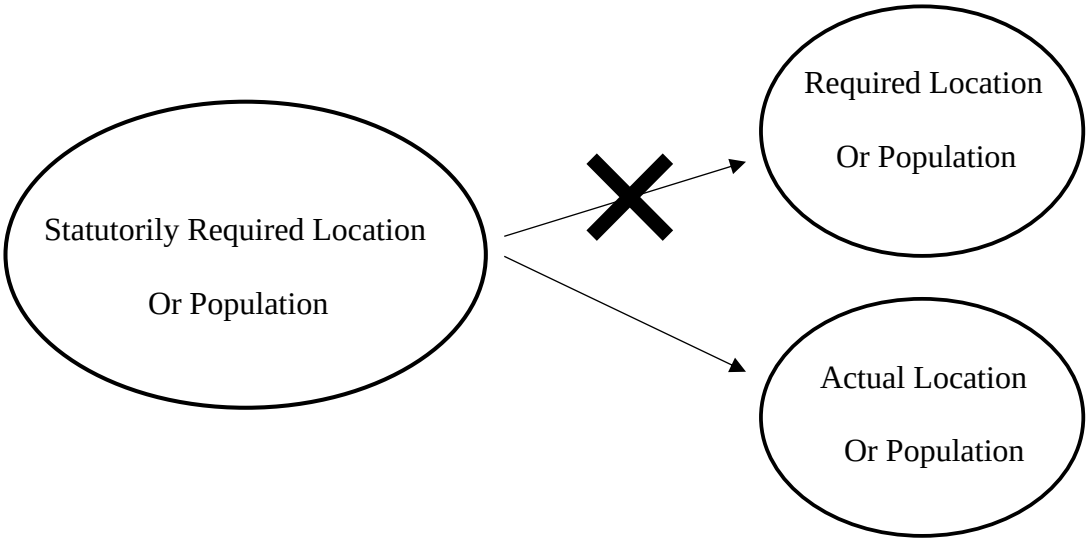
Figure 11 illustrates the situation where a regulatory or judicial decision narrows the scope of a reform statute. An easy to conceptualize example is where judges "stacked" technical violations so that they could immediately revoke probation and send an inmate to serve the balance of his or her sentence instead of routing the person to a TVC. Another example is when MDOC reportedly discontinued, at least for a time, earned discharge credits so that a person could not reduce the time spent on supervision.

Figure 11. Regulatory or judicial decisions constricting the scope of a reform statute.



Yet another illustration of a *failure to exercise fidelity to statutory language* is seen in Figure 12. This represents situations where a statute specified a program be located in a particular type of site or target a particular population, yet this was not done. For example, the initial location of TVCs in a prison setting is a prime but extreme example. Prisons were precisely the location TVCs were designed to avoid because a significant supporting rationale for TVCs is that technical violators do not need to be exposed to the potentially criminogenic effect of prisons. Drug courts are an easy example of targeting incorrect populations when they begin to be used for unintended purposes, such as get-out-of-jail-free-cards for well-off college students caught with small amounts of marijuana. These courts were intended for persons who face legitimate addiction issues that could result in the person having a lifetime of legal problems that often grow in severity over time.

Figure 12. Applying the reform statute to the wrong location or population.



Suggestions for Testing the Theories

These theories should be tested through future research. Grounded theory is a means by which to construct theory, and it does so from the data collected. It attempts to construct reliable theories by testing the theories against the data it collects, but it is constrained and limited by the very universe of data before it. The universe of data can only reach so wide in scope in any given study and while the researcher attempts to collect data to the point of saturation, other data might change the analysis. Future researchers should test these theories against the data they collect to determine if they, too, find these theories helpful explanations of how reform implementation is impeded, or if modification or even discarding of the theories is needed.

The constructs for each theory were provided above in part to aid future researchers in these efforts. The initial codes and focused codes that serve as building blocks for the theories expressly show how the researcher categorized the data collected and "built-up" to theory. The codes were expressly provided to, metaphorically speaking,

show future researchers the cookbook for how the dish was made. Future researchers using grounded theory to examine reform implementation should determine whether the codes constructed in this study from this data also fit the data they collect, or if the codes do not fit or they are identifying codes that are different. If the codes constructed in this study do not fit their data or if they are identifying additional codes at the initial or focused coding level, this may well impact the explanatory power of the theories constructed in this study. It may also result in the construction of modified or new theories. The use of the codes identified in this study for measurement in future research is not limited to interviews in the style of grounded theory. For example, surveys might well be used to measure the concepts captured by these codes and assess the strength of these theories.

The point here is not to provide an exhaustive listing and full explanation of the ways in which these theories should be tested, but rather to provide some suggestions for starting points as to how they could be, and to emphasize that they should be.

Significance of Research

How This Research Develops and Extends Prior Academic Research

Past research has examined implementation failures in a variety of settings. Ellickson and Petersilia (1983) was the seminal criminal justice implementation study that examined numerous criminal justice innovations across a range of reforms. Smith et al. (2012) and Greenwood and Walsh (2012) extended the research of Ellickson and Petersilia (1983) by examining the implementation of very specific criminal justice policies, with Smith et al. examining the earned discharge program in California aimed at reducing supervision time and Greenwood and Walsh examining implementation of the

Blueprint for Violence Prevention programs in a number of states. Gottfredson and Gottfredson (2002), Fagan & Mihalic (2003), and Mihalic, Fagan, & Argamaso (2008) also extended the research of Ellickson and Petersilia (1983), but did so in the educational setting with an examination of the implementation of school-based policies.

This study differs from all of these in both its approach and its intellectual product. It differs in approach because it applied constructivist grounded theory to create a set of theories to explain how and why obstacles to implementation exist. Past studies were generally case studies or reviews of case studies, and the different approach used here created a different intellectual product by producing a set of theories that were dynamic in nature rather than the static, descriptive factors identified in past studies. The theories constructed in this study tell the reader *precisely how* implementation is being obstructed, e.g., failing to exercise fidelity to statutory language, as opposed to articulating a listing of static, descriptive categories under which a range of obstructions might fall, e.g., insufficient communication, lack of leadership, divisions of authority.

At least two of the individual theories emanating from this dissertation make their own unique claims because of their close tie to the modern criminal justice reform movement. The *failure to reinvest* (Theory 5) and *failure to make programs affordable* (Theory 6) were specific to the way reform was sold to the public on the front-end and the corresponding inability to fully implement reform on the back-end. Although general discussions about failing to reinvest in justice initiatives are not newly raised by this research, the theory in this particular context is new because modern criminal justice reform was sold to the public on the very idea that savings would be reinvested and that this would, ultimately, return society to a prison population and incarceration rate that

more closely resembled the world as it existed before the prison population exploded. Now, according to participants, reinvestment is not taking place and it is preventing the full implementation of the very reform policies the public was convinced it needed to pass into law. The *failure to make programs affordable* is highly related to this, both because reinvestment could be used to make these programs affordable and because reform, as it was sold to the public, never hinged on a participant's ability to pay.

Two theories that are relatively distinct from the other theories articulated in this dissertation are *failure to make data accessible* (Theory 4) and *failure to address pre-trial problems* (Theory 7). Although a lack of access to data was not identified as a major obstacle to implementation in the academic literature reviewed, the participants in this study are not the only observers to have identified this as a major issue for criminal justice policy (Bach & Travis, 2021, Aug. 16). As Bach and Travis (2021) stated only very recently, "Advocates for criminal justice reform from different fields and backgrounds are all reaching the same conclusion: Any attempt at real, lasting change will require a significant investment in our ability to collect, store, and share data." The *failure to address pre-trial problems* is not technically a failure to implement a reform that has passed the legislature. It is more a reflection of what has *not* been done that the legislature *should* do. It is mentioned here because it was identified by a now former sheriff of a large county as a major oversight of criminal justice reform, and a problem that, if it were addressed, could have major ripple effects downstream and positively impact other problematic areas.

There is some overlap between the findings of this study and past ones, as might be expected. For example, Theory 1 of this study, *failure to convince*, overlaps with

Ellickson and Petersilia's (1983) factors of sincere motivation at adoption, top leadership support, and director and staff commitment because if these people have not been convinced of the merits of reform, they will not have sincere motivation, will not support it, and will not be committed to it. But the important point is this study offers explanations for *why* these categories of obstructions exist, and in so doing, adds depth to previous research in this area. As another example, for the overarching theory of *failure to exercise fidelity to statutory language* (Theory 3), this dissertation is not the first to pronounce that a failure to exercise fidelity to statutory language is a problem in the public policy world. Entire texts have been written about the subject (Mears, 2010). However, this dissertation theorizes that *failure to exercise fidelity to statutory language* serves as a massive impediment to the implementation of modern-day criminal justice reform. If this theory is valid, then the good news is that at least one fix is free. Simply apply the statute as intended and the savings from doing so to a state could be substantial. This is equally true for the related theory of *failure to hit targets* (Theory 2) where policies fail to hit entire populations for which they were intended. This ties directly into the next subsection and discussion, which is why this research matters to non-academic criminal justice professionals.

Why This Research Matters to Non-Academic Criminal Justice Professionals

To harken back to a quote provided in the literature review, it is not that the reform "did not work," but that it "did not happen" (Van Voorhis, Cullen, & Applegate, 1995, p. 20). It would be a vast overstatement to proclaim that criminal justice reform in Mississippi, writ large, "did not happen" because it was not implemented correctly. In many ways it has been. However, participants identified specific areas where reform was

not implemented as intended either by mistake of the person in charge or by design when the person disagreed with some aspect of reform. In these particular instances, the reform, in effect, "did not happen." Cherry-picking which parts of a policy to implement matters. As Duwe and Clark (2015) have shown, the difference between 80% of a policy being implemented versus 20% is often determinative of whether the policy works at all. That is to say, when a gatekeeper cherry-picks from a policy to implement only those portions he or she agrees with, the consequence is often that the policy does not work. That is the bad news, and practitioners should be aware of it. The good news is that as a practical matter, perhaps the most promising aspect of a theory that *failure to exercise fidelity to statutory language* has been such a moving force is that the cost to fix it is absolutely free in real dollars. This is the biggest take-away for the practitioner from this dissertation. A big impact can be made, and made relatively quickly, through simple application of statutes as they were intended to be applied and without playing games to circumvent their true intent.

A *failure to make data accessible*, *failure to reinvest*, *failure to make programs affordable*, and *failure to address pre-trial problems* will all cost real dollars. While a *failure to reinvest* might be viewed by some as not costing anything because it is merely taking money saved by reform and directing it back into programs aimed at reducing the size of the incarcerated population, others will likely take a different view. As one participant who is active in legislative reform efforts for a think tank noted, there is a belief among decision-makers that the state already contributes a significant sum annually to the Mississippi Department of Corrections. Any request that includes additional funds is almost destined to fail, at least according to this participant, and

others. Some might object to using reform savings to expand programs as a back-door method of expanding the size of government beyond that which existed before criminal penalties became more punitive in the 1980s and gave rise to larger prison populations. The argument from this perspective would be that all that is required today is a rollback of the punitive nature of some penalties, and not an investment in services aimed towards policy objectives such as reducing recidivism. Such an investment in services, the argument would go, would put an obligation on the state that it never had before the rise of punitive incarceration. All of this is to say that proponents should be prepared to make a case for why front-end cost increases will result in back-end savings, and why the expansion of government services in this area is a prudent use of taxpayer dollars that will realistically reduce the size of the incarcerated population through reduced offense rates. Otherwise, political realities will make resolving some of these obstacles very difficult.

CHAPTER V – CONCLUSION

The United States has an incarceration rate and prison population that exceed other liberal democracies and most other nations around the world. This has gained significant attention over the past two decades and is often referred to in terms of mass incarceration or overincarceration. Criminal justice reform has been identified as one way to address this issue, and it has risen in popularity across numerous states. This dissertation used constructivist grounded theory to develop a set of theories to explain obstacles to the implementation of criminal justice reform in Mississippi. Mississippi was chosen as the study setting because the state has been recognized as a leader in enacting criminal justice reform legislation *and* it has one of the highest incarceration rates in the nation that has one of the highest incarceration rates in the world (FWD.us, 2020). Therefore, since criminal justice reform seeks to address overincarceration, Mississippi has one of the highest incarceration rates in the world, and the state is a leader in reform efforts, it would seem to reason that reform could have a significant impact in the state.

Implementation evaluations have been performed with far less frequency than outcome evaluations, even though it is widely recognized that implementation affects outcomes. The implementation evaluations that exist do not provide a general consensus regarding factors that hinder implementation. While implementation evaluations such as Duwe & Clark (2015), Ellickson and Petersilia (1983), Greenwood & Welsh (2012), and Smith et al. (2012) provided a framework for this research, those studies were case studies or studies evaluating case studies and were not directly aimed towards theory building. This study was, and it used constructivist grounded theory to do so.

There have not been any studies identified that used grounded theory to develop a set of theories about obstacles to the implementation of recent criminal justice reform. Because this dissertation did, it contributes to the extant literature by offering a set of theories that identify for policymakers and future researchers obstacles to the implementation of reform that could occur in other jurisdictions. Furthermore, it provides depth to the findings of previous researchers, such as Ellickson and Petersilia (1983), and it offers new theories for why reform efforts are hindered and what to do about it.

Seven theories were formed by applying Charmaz's (2014) constructivist version of grounded theory: (1) *failure to convince*, (2) *failure to hit targets*, (3) *failure to exercise fidelity to statutory language*, (4) *failure to make data accessible*, (5) *failure to reinvest*, (6) *failure to make programs affordable*, and (7) *failure to address pre-trial problems*. *Failure to convince* reflected persons and institutions who hindered implementation because they were not convinced of its necessity or benefit. *Failure to hit targets* symbolized policies and programs directed towards the wrong people, that use the wrong programs, or are enacted at the wrong location. *Failure to exercise fidelity to statutory language* represented imposing requirements not found in the statutes such that it made it more difficult for persons to participate in a reform program or benefit from a reform policy. *Failure to make data accessible* captured the notion that there is a lack of data needed to make reliable assessments about implementation and outcomes. *Failure to reinvest* was based on the idea the state should reinvest savings realized from reform back into areas that impact criminal justice, such as hiring more parole and probation officers, financing participation in reform programs that otherwise rely on fees, or addressing pre-trial problems and delays not yet addressed by reform. *Failure to make*

programs affordable signified instances where some persons could not afford to participate in reform programs because of fees. Finally, *failure to address pre-trial problems* reflected the failure of reform efforts to address the significant problems that occur before trial occurs, such as delays in mental health evaluations and laboratory reports.

An overarching theory was identified that had the potential to best explain implementation obstacles in Mississippi. This was a *failure to exercise fidelity to statutory language*. Participants discussed several examples of reform not being implemented with fidelity to the text or intent of legislation and the result was that reform programs did not operate as intended. The reasons for this varied. Sometimes it was because a program was hosted in the incorrect location, such as when TVCs were initially placed at a correctional facility. Other times it was because the reach of reform legislation was "narrowed" by persons with authority adding extra-statutory requirements for participation in reform programs. The researcher found additional support for identifying this as an overarching theory based upon its overlap with the theories of *failure to convince*, *failure to hit targets*, *failure to reinvest*, and *failure to make programs affordable*. Each of these theories contributed to the problem of not always adhering to statutory language or intent.

It is notable that on some occasions, implementation obstacles were identified and remedied. This is consistent with Ellickson and Petersilia's (1983) opinion that implementation is a process, not static event, and improvements to implementation can be made over time. An example of this is when judges "stacked" technical violations of parole to end-run a reform statute that attempted to decrease the number of persons who

were sent back to prison for technical violations. In that case, the Legislature passed an additional bill, H.B. 387, that clarified that a revocation comprised of one or more technical violations counted as only one technical violation. This can be the difference between 90 days at a TVC and serving the balance of a suspended sentence.

This research is limited because it is uses one state as a study setting and it is located in a particular geographic region of a large country. While it is theorized the experience of Mississippi can be extrapolated to other states in other regions, "all criminal justice is local," as the saying goes, and there may be factors present in other jurisdictions that diminish or discard with considerations that were present in this setting.

There is also an inherent limitation to grounded theory that is recognized by Charmaz (2014). That is, grounded theory is limited by the very perspectives of the participants upon which the researcher relies and the researcher's interpretation and recording of them. When participants provide observations, they can only relay the world as they see it, but not all persons in the same situation would interpret the information the same or even necessarily observe the same things. This is why, for example, although eye witness testimony in criminal trials is the primary type of evidence offered against defendants, it frequently provides unreliable and conflicting information and has been cited as the number one reason for wrongful convictions (Scheck, et al., 2003). People see things differently and sometimes inaccurately. Similarly, when participants provide observations to the researcher, not every researcher will necessarily interpret and record these observations in the same way.

The research was additionally limited by having less prosecutors and inmates participate than persons from other groups. The researcher concluded this was a

limitation more of optics than substance. The difference in numbers of participants between prosecutors and policymakers, judges and administrators, and defenders was not large. There were four prosecutors but seven policymakers and seven defenders. Judges and administrators were closer with five. It was the researcher's impression that prosecutors as a group were less willing to participate in research of this nature, while defenders and policymakers participated with enthusiasm. Perhaps this should not come as a surprise given the nature of what the groups do professionally, e.g., it is often the case the defenders see problems with the system because they are charged with defending persons against a system that is accusing their clients of a crime or crimes. While only one inmate participated, his participation was viewed more as a bonus than presenting a problem of having only one inmate participant. It was entirely unanticipated there would be any inmate participants, but an opportunity presented itself during the course of the research to interview such a person. That said, his presence presents an issue with an imbalance in participants, and future research may focus more on the perspectives of persons who have personally been on the receiving end of criminal legal enforcement.

This segues directly into recommendations for future research, particularly those applying grounded theory to discover implementation obstacles to reform. In addition to potentially seeking more participants from the prosecutor and inmate groups, future researchers may also want to examine specific programs. This research examined implementation from a more global view by examining state-wide criminal justice legislation regardless of a specific program or policy. The thought is that what is true at a general level is likely also true at a specific level and that the results of this general level research can inform efforts to implement specific policies. Future research might examine

specific areas of reform to learn about a particular area at a more granular level and to transport those lessons to other specific areas. For example, in a jurisdiction such as Mississippi where drug courts have largely been adopted, the implementation of drug court statutes could be examined as a research project in and of itself. So, too, could the implementation of statutes regarding TVCs, and other specific areas of reform. Although the examination of specific programs would look more like some past implementation research, applying grounded theory could set it apart and yield meaningful information not previously discovered.

Finally, future researchers should test the theories formed from this research and dissertation. Although this researcher tested the theories against the data obtained from interviews for this study, future researchers should test the theories against the data they collect. It is through the continual process of research and testing that we shall learn more about how to successfully remove obstacles to the implementation of reform and criminal justice policy generally.

APPENDIX A – IRB Approval

Office *of*
Research Integrity

THE UNIVERSITY OF SOUTHERN MISSISSIPPI

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NOTICE OF INSTITUTIONAL REVIEW BOARD ACTION

The project below has been reviewed by The University of Southern Mississippi Institutional Review Board in accordance with Federal Drug Administration regulations (21 CFR 26, 111), Department of Health and Human Services regulations (45 CFR Part 46), and University Policy to ensure:

- The risks to subjects are minimized and reasonable in relation to the anticipated benefits.
- The selection of subjects is equitable.
- Informed consent is adequate and appropriately documented.
- Where appropriate, the research plan makes adequate provisions for monitoring the data collected to ensure the safety of the subjects.
- Where appropriate, there are adequate provisions to protect the privacy of subjects and to maintain the confidentiality of all data.
- Appropriate additional safeguards have been included to protect vulnerable subjects.
- Any unanticipated, serious, or continuing problems encountered involving risks to subjects must be reported immediately. Problems should be reported to ORI via the Incident template on Cayuse IRB.
- The period of approval is twelve months. An application for renewal must be submitted for projects exceeding twelve months.
- Face-to-Face data collection may not commence without prior approval from the Vice President for Researches Office.

PROTOCOL NUMBER: IRB-20-374
PROJECT TITLE: Obstacles to the Implementation of Criminal Justice Reform
SCHOOL/PROGRAM: School of CJFS, Criminal Justice, Forensic Sci
RESEARCHER(S): Matthew Allen, Joshua B. Hill

IRB COMMITTEE ACTION: Approved
CATEGORY: Expedited
7. Research on individual or group characteristics or behavior (including, but not limited to, research on perception, cognition, motivation, identity, language, communication, cultural beliefs or practices, and social behavior) or research employing survey, interview, oral history, focus group, program evaluation, human factors evaluation, or quality assurance methodologies.

PERIOD OF APPROVAL: September 19, 2020

Donald Sacco Jr.

Donald Sacco, Ph.D.
Institutional Review Board Chairperson

APPENDIX B – Interview Guide

1. What is your place of employment, title, and responsibilities?
2. What do you know about criminal justice reform in Mississippi?
3. Where have you seen it work well?
4. Have you seen it not work well in any areas?
5. Have you seen any barriers or obstacles to implementation of reform?
6. What are they?
7. How do they function as barriers or obstacles?
8. Why do they serve as barriers or obstacles?
9. Are the barriers or obstacles allowed to persist?
10. If so, why?

APPENDIX C – Codebook

Code	Definition	Example Quotation
Balancing "The Reformer Dilemma"	When faced with a situation to correct, reformer activists must always ask if seeking the solution will result not in achieving the solution but rather an even worse reality than the present, e.g., a program will not be fixed to address the perceived problem, but will be discarded in its entirety resulting in no one being helped at all.	"It kind of puts the reformers in a bad position because, you know, you run the risk of, if you try to fix this, you run the risk of eliminating these programs in places. And so it's a tough question. Do you want to deny this opportunity to people who can afford it, you know, which might be the right thing to do, just to ensure that it's supplied equally? You do run the risk of eliminating it for everybody."
Believing CJ reform should look differently	A belief that reform measures are not addressing the key issues, lacking substance, missing their target audience, or are in some other way deficient.	"But honestly, one of the biggest policy changes that I think would really benefit the criminal justice system would be to a switch to appointed prosecutors and appointed sheriffs."
Believing in CJ goals that conflict with reform	A belief the criminal justice system should have goals that directly conflict with the spirit and goals of reform.	"That's what that's what a lot of this comes down to is that, you know, there's a constituency of people who are just reflexively against any sort of criminal justice reform. Within the legislature, I think those are pretty small, outside, but they're able to leverage, they're able to leverage some powerful interest groups, like law enforcement and sheriffs onto their side. And, and that's kind of tension that exists."

Code	Definition	Example Quotation
Branding system as "criminal legal system"	A belief the term "criminal justice system" is a misnomer, and a more accurate descriptor would be "criminal legal system."	"We have a criminal legal system. We don't have a criminal justice system."
Challenging bureaucratic hurdles	The existence of bureaucratic roadblocks to persons within the system that make reentry more difficult, e.g., not getting a driver's license before release.	"And these sounds so trivial, and yet they're so important. Getting a person who's released a driver's license or an ID card. That sounds small, but people usually can't find work if they don't have that."
Clouding the data	This refers to lack of access to data at the state or local level either because it is not shared or because it does not exist.	"The problem with that is the databases out there for ascertaining what's going on at the Justice Court level and municipal court level and county court level are not that good."
Confusing inconsistency across jurisdictions	Program rules that vary by jurisdiction. Drug courts are a prominent example of this.	"So, one, drug courts help a lot of people and that they provide an alternative for somebody who would otherwise be facing a felony, and go into prison. And so that's a good thing, don't want to take that away from anybody. Um, they operate differently, depending on what jurisdiction you're in. Some judges take this very seriously and do a great job with it. Some don't, and don't really care."
Creating requirements not in statutes	This refers to requirements imposed on persons during their participation in some reform measure or program when the requirements are not found in the statute, i.e.,	"I asked them for copies of their rules and regulations and the individual rules that they had for people, some of them are just silly, like, you can't date without permission from the judge,

Code	Definition	Example Quotation
	extra-statutory requirements.	can't get married without permission. Some of these things were unconstitutional."
Curtailing judicial discretion	Judicial resistance to reform on the basis the judge's personal experience leads him or her to disagree with reform.	"The other side of the obstacle was there was a lot of resistance from judges. We had one judge who declared the TVC program and limits that the legislature put on them for revocation unconstitutional."
Curtailing prosecutorial discretion	Opposition to reform on the basis it will curtail prosecutorial discretion in how to prosecute or recommend the sentence for a crime.	"The prosecutors' ideal paradigm is that they can, you know, charge everyone with the death sentence and then back off of that, because their view is, look, I'm the prosecutor. I know what's right. And so the laws need to give me maximum punitive authority. Because if I have maximum punitive authority, then I can do what I feel is right. And if the lawmakers don't give me maximum punitive authority, then there may be a situation that comes down the pike, where I believe somebody needs something that I'm not allowed to give them."
Delaying on TVCs	This captures an institutional bandwidth issue. The concept for TVCs was in the legislation, but the institutional infrastructure to handle the target population was not. This also captures the idea that	"Initially, there were a lot of problems with the TVCs, and that they just looked more like jails than anything else. And, you know, the intent of those is to actually be more of a halfway house type

Code	Definition	Example Quotation
	some judges have searched for ways around sending inmates to TVCs so that they can instead be sent back to prison.	situation. I think they do look more like that now."
Disagreeing with a reform measure	A disagreement with a statutory change made by reform legislation.	"The eligibility for drug court isn't pretty. It used to be pretty strict to get in. And what they've done is they've removed all the barriers now….You can be a drug dealer…And that's, that's the worst idea. That's like a fox in the henhouse."
Disagreeing with program purpose	A belief that a program has an unneeded purpose or a purpose that runs contrary to the person's belief about what should be the goals of the criminal justice system.	"So there's not like a, a consensus on what we're even talking about when we're talking about justice, reinvestment or reentry programs."
Disagreeing with program substance	A belief a program should be administered or taught in a substantively different way.	"The RRP program that was supposed to take over, you know, all the research points to doing these recidivism reduction programs outside of an institution. But what it really became was just a substitute for RID, you know, it was RID without push-ups."
Diverting crises and mental health from jail	Programs that have treated persons and situations outside of the traditional arrest and incarceration approach.	"So, again, the whole law enforcement community in the county is part of this program. So that's one tool that we can use. So we're not shipping somebody that needs mental health help to the jail."
Exercising racism	The idea that racism shapes views about the criminal justice system and receptivity to reform.	"In some ways, I don't think you can separate the conversation about race from criminal justice

Code	Definition	Example Quotation
		reform in a state like Mississippi with the highest African American population."
Failing parts of drug courts	Extra-statutory requirements of drug courts around the state that have limited or damaged their effectiveness.	"And that goes back to how long should a drug court be? Right? The science is very clear. We should be sitting at 18 months to two years. Well, that's not what the drug courts in Mississippi do."
Failing to reinvest savings	The notion that the legislature's failure to take savings realized as a result of reforms and reinvest them into criminal justice related programs, such as mental health and drug courts, has hindered full implementation of existing reforms.	"And by the way, Department of Corrections, since 585, has gone from 24,000 down to 17,000 inmates at a savings of I can't recall the specific savings, but it is multiple millions. Unfortunately, we wanted those millions and savings to put back into corrections where we need it. But that didn't happen."
Fearing crime	The very fear of crime, violent and non-violent, can motivate some persons to hinder reform implementation.	"Fear is a big problem."
Fearing people on drugs	The fear that some persons have of other persons who use drugs.	"There are a lot of people who are just afraid of drugs. And there are a lot of people who think our drug laws actually prevent people from doing drugs."
Ignoring reentry	The notion the state has failed to take reentry seriously and therefore has failed to dedicate meaningful programming to those preparing to reenter society.	"There's not a whole lot to talk about when it comes to just programming that the state does related to reentry. I mean, the Department of Corrections, for the most part, gives people $25 and a bus

Code	Definition	Example Quotation
		ticket. And that's, that's basically it."
Injecting disruptive change into the system with reform	The idea that reform itself can create hurdles to administering justice efficiently, such as when crimes previously designated as felonies are recategorized as misdemeanors, which pushes the handling of these offenses down to local governments and potentially overburdens and even overwhelms them.	"There was a lot of concern about, you know, you're not doing something about crime, you're just making these property crimes misdemeanors, and the theory was that going to be a huge burden on the local governments because they're not going to go to prison, they're gonna sit in the jail at the county expense or the city expense."
Institutional resistance	Sectors within the criminal justice apparatus opposing a change injected by reform because it will modify their authority or responsibility in some way.	"I would say the biggest constituency that's opposed to almost all of these stuff, all this stuff is prosecutors and district attorneys, you know, they generally are reflexively against any sort of criminal justice reform that comes out of the legislature or this considered by the legislature."
Lacking programming substance	A program that is too "thin" on program substance, e.g., a program where not much is taught, is entirely too short, etc.	"That's one of the biggest obstacles, you know, what the problem is with these we now called intervention courts, that I see is that they're really good at supervision, but not really good at support, or, or treatment."
Lacking systematic or scientific rigor	The failure to adopt performance measures or evidence-based standards.	"And it was just ridiculous. They had, they had one large room, which was the classroom, and they had it partitioned. And you had four classes going at the

Code	Definition	Example Quotation
		same time. And it just, it wasn't, it was just a holding place for 90 days that they got some lectures."
Leading (or not) with leadership	The idea that leadership matters and sets the tone, and that there have been shifts in policy emphasis with changing leadership.	"I think top leadership is because top leadership sets the tone. Okay, what are we about? They're the ones who get to look at the mission of the agency and say, Look, the statute says this, this, this, but this is what we're going to emphasize, these are the most important things that we do. And burl is talking about preparing people for reentry. And I don't remember Chris ever talking about [that]."
Leaning Lady Justice	More resources are provided to the district attorney offices than public defender offices.	"But in all honesty, criminal justice reform starts with fully funding the public defenders throughout the state and making full time offices circuit-wide to parallel that of the DAs office. That's where justice happens."
Locating programs in the wrong environment	Programs hosted in environments in which they were not intended to be hosted.	"But it's inside the institution, it really isn't fulfilling a purpose of being an alternative to sentencing people to an institution read was, in theory, an alternative."
Mimicking others' models	The notion that Mississippi will borrow programs that work from other states and implement them here rather than attempt to recreate the wheel.	"And basically, rather than reinvent the wheel, we sort of plagiarized are pretty good a lot with their consent. And it is a good bill."

Code	Definition	Example Quotation
Missing marks on revocation reform	These were set-backs in the implementation of revocation reform measures, such as housing a TVC in a prison instead of a community setting, and the ways some judges sought to still revoke for technical violations by aggressive interpretations of revocation statutes.	"That's the thing that I want to emphasize is that judges are continuing to get it find ways to get around these graduated penalties of 90 days, 120 days, and then the balance of this suspended sentence."
Missing the mark, need reform for pre-trial issues for speedy trial guarantee	Reform has been directed towards crime-level categorization (felony v. misdemeanor), sentence length, and at the stage of incarceration through release. This code represents the argument that more reform should be directed towards pre-trial issues, such as taking steps necessary to ensure defendants receive a speedy trial, receive a timely mental health examination, receive a timely crime lab report in a murder investigation, etc.	"What I would like to see, though, is more attention paid to what happens pre-trial…Like we got people down in detention center now has been down there more than 1000 days. Right. Which I think according to the Constitution, that's a clear violation, you know, speedy trial, promise that you get as an American citizen…So the criminal justice reform, most of the parts that I hear, it has to do with people that are already incarcerated…I'd like to see more with pre-trial detainees."
Missing the target audience	Applying a program to the wrong people.	"Well, the drug court is, though as the way it was originally, originally designed, and the way that I think it's trying to be pushed there by the Administrative Office of courts, is that it is an alternative sentencing. And it's a court of last resort. What I mean by that is if I get charged with possession of cocaine, or

Code	Definition	Example Quotation
		possession of meth, or even possession of marijuana, because we still we still charge people with felony possession of marijuana. Those people if they're a first-time offender, they're not supposed to be in drug court, unless they have some type of record or pattern where they need to be in drug court."
Misunderstanding reform	Areas where misunderstandings of reform cause people to oppose it from distrust or to implement it in a way that does not correspond with the intent of the reform.	"I mean, I think a lot of these sheriffs and police chiefs when you sit down and actually go through, you know, the actual content of these policies and what they're intended to do and how they're implemented, you don't meet a lot of objection. I think that they are leveraged by a lot of people who are just opposed to it in any form."
Needing oversight	Programs that needed oversight from a person or body so that they could be held to evidence-based practices or as close to evidence-based as possible.	"Some judges take this very seriously and do a great job with it. Some don't, and don't really care. And, um, the Supreme Court is charged with certifying them and applying best practices. In my view, they've been negligent in that duty and have allowed judges to just basically not run drug court and just pocket the money they're getting from people who are participating."

Code	Definition	Example Quotation
Non-cooperating defendants	Some defendants do not want to participate in alternative reform programs and instead prefer to be incarcerated.	"And also they're kind of smart, too. They know how much time is over their head, and they can figure it out. If they got two years left on drug court, I mean, they don't like, you can't have any fun, you can't get cranky, you can't do anything. You gotta be, you have to work. You have to be in bed at a certain time. You have ankle monitors and all that. No one wants it…They'd rather go to a year in prison or less than to do two years of having to live with drug court. So are there people that would rather do that? Yeah, there's a lot of people like that. And they know they can calculate their head."
Overloading probation and parole officers	So many persons are assigned to probation and parole officers that it is impossible the officers could contribute a sufficient amount of time to each person to whom they are assigned.	"I'll be frank, you want to talk about something doesn't work, probation and parole don't work. That does not work. It's a mathematical impossibility…if you run the math, I would be curious how many people each agent is assigned to supervise. It has to be hundreds. It has to be in the hundreds if you just look at the population that is technically on parole or probation…say you have 300, 400 people on your docket as an agent that you have to get reports from every month, and there's

Code	Definition	Example Quotation
		only 20 working days in a month. You're talking 20 people per day."
PEERing oversight	In addition to its normal role oversight duties, PEER has a specific oversight role over criminal justice reform in Mississippi through its seat on the HB 585 Task Force.	"The people who drafted 585 and crafted the section on the taskforce decided to make give the pier committee staff a position on the task force."
Politicking and perceptions of political power	The perceptions of different groups about the political power and allegiances of other groups and how that impacts the discourse around reform.	"But the only frustrating thing to me about criminal justice reform is we, the people who work within the system, they don't want to hear from us. They want to, they want to tell us how it's going to be. And that's fine. We'll follow the law. But the problem is, they don't understand the reality of some of this."
Preventing parole for violent offenders	There is a misunderstanding about how H.B. 585 applies to violent offenders. It does not apply at 50% of sentence served as sold and commonly thought, even by criminal defense lawyers.	"A lot of people rather than reading the statutes, read some newspaper reports about this 50% rule. Yeah, and started telling their clients if you're convicted of a violent crime, you can be released after 50%. When in fact, what it did is it just raised the floor for all violent criminals, and it had no impact on the people who are ineligible. So, you know, armed robbery was a day for day sentence before 585 is a day for day sentence after 585."
Pricing people out	This is when some persons are priced-out of participating in reform	"So you have to pay to get into drug court. In Mississippi, you have

Code	Definition	Example Quotation
	programs because they cannot afford the fees.	monthly fees, you have to pay for all your testing that you have to do. If you can't afford it, then you're not in. Um, and so some drug courts managed to make that more equitable by, you know, the judges get to operate this fund however they choose. And so a lot of them use it to cover their expenses, and then create scholarships with what's left to allow folks who can't afford to get in. Some don't do that and sit on the money or spend it for other reasons. In my mind, this is a prime example of what the Supreme Court should be doing and going in and saying, hey, look, if your numbers don't reflect the people who are actually charged with these offenses, then you're opening yourself up to a federal lawsuit for you know, an equal protection violation which has been threatened over this."
Protecting their financial interests	Actors within the criminal justice apparatus that hinder reform or thwart potential reform because it is believed it will threaten a financial self-interest.	"One of the biggest obstacles to any kind of change, and it's not just the criminal justice system, but since that's where I spend my whole life, I see it in the criminal justice system, is that, you know, when you start affecting money."

Code	Definition	Example Quotation
Protecting turf	Actors within the system who oppose a measure or program because it will affect their domain.	"And it all comes back down in my opinion to money and power."
Recategorizing non-drug non-violent offenses	Discussions concerning the recategorization of many non-drug, non-violent offenses from felony to misdemeanor.	"If we want to change this, just be talking if we want to change, in my opinion, it doesn't happen by decriminalizing criminal activity is sort of like saying, we've solved drunk driving by raising the blood alcohol limit. 2.3 You know, it's like, hey, DUIs have fallen off. 90%. But there's still drugs out there on the road, you know what I mean? But, but, but they'll stand up and beat their chests and think that they've done something. And what I have found is it just creates a more revolving door with this 25% with, you know, all this other stuff that they're implementing changes for. So, you know, we don't need to decriminalize acts to solve the crime problem. In fact, that only harms the innocent people. That harms the people out there who haven't done anything to anyone they become prey for, for these folks."
Reducing drug sentences to be more "fair"	The idea, generally supported, that past drug laws had sentences that were too severe and varied by drug in ways that resulted in substantial	"And, and when we start talking about 585, you'll see the huge reform 585 was when it came to sentences, especially drugs sentences. You know, before if you had cocaine,

Code	Definition	Example Quotation
	sentence differentials by race.	it could be a rock of cocaine, it could be five pounds of cocaine, you're going away for 30 years, you had to 85% of it. When, when this came out, House Bill 585, it significantly changed it, it made it more fair, it went ahead and made it weight based. And so that was really the big thing."
Resisting the extra work created by reform	Some persons may oppose or hinder the implementation of reform on the basis it imposes extra work with no additional pay.	"But I think a judge doesn't get paid an extra dime for doing this. I get no more money than if I didn't have a drug court…I like to do it. But drug court will take a minimum of 20% of my time. And I think I'm conservative there. Because it does. You just got it. You either do it because it's a calling or you like it and you believe it's helping your society or not."
Starving for dollars	Resources matter, and a lack of funds can prevent a program from being implemented.	"I mean, the state spends a lot of money from a percentage basis on corrections already. And it's a tough sell to argue for reinvestment and any sort of reentry programming or drug court." "Yeah, the second thing we run into is that there's no, there's no real funding out there in Mississippi for any of this."
Suffocating and overwhelming population size	The notion the sheer size of a population is such that the successful implementation	"Well, you just got to, I mean, you try to give everybody their day in

Code	Definition	Example Quotation
	of any policy that is supposed to address that population is very difficult.	court and you try to you try to hear both sides and stuff. But then there's some days it's just you're trying to move people through the system as fast as you can and be fair, it's difficult."
Surviving the Willie Horton effect	It only takes one bad case with significant media attention to potentially derail a reform measure that is a net positive.	"But I think part of the problem people in the criminal justice system face is this. It's so easy for the press to pick out one or two incidents, and really kill a program."
Turning Points / Hooks for Change	The idea that incarcerated persons need a hook on which to hang a turning point for their life.	"But listen, I'm not gonna church it up too much. Because I did have a heavy drug problem. I wasn't doing the right things in my life. You know, my, my mom who loved me dearly and was giving up on me, you know, I was working my lawyer to death for seven years, you know. So, you know, it's not like I was leading church services or anything like that all. I deserved to go to prison, honestly, if you if you want me to say that. Because, you know, a lot of the things that I did, I got away with, you know. I was I was trying to support a drug habit that had taken me down dark roads. I didn't have God in my life, I just, I wasn't a good person at all, you know, I wasn't necessarily a bad person, but I just wasn't

Code	Definition	Example Quotation
		making right decisions. And it's for me, it's about that conscious contact with God. And when I'm when I'm still in my body with drugs and alcohol and other substances, I don't have that, you know, cuts off. So it's not like I was this demon child, I just didn't have God in my life."
Viewing skeptically because of experience	The experience of persons in the field causes some to be skeptical of some reform measures.	"I've been doing it since '97. Probably the only law I need to ever do is criminal law. And so I've seen it, you know, the pendulum swings, you know, we're gonna get tough on crime. And then jails go up. Now we're gonna let everybody out and then the crime starts going up. Yes, pendulum."

APPENDIX D – Coding Process

The process begins by applying initial codes to the testimony of participants. This is performed when the researcher is reviewing the transcript of a participant's testimony. In this study, the researcher used Atlas.ti to review transcripts and apply codes. Initial codes are the building blocks from which focused codes are constructed, and focused codes serve as building blocks for the resulting theories. To demonstrate this process, provided below are example quotations that were assigned to the initial codes *pricing people out* and *missing the target audience*. Following these example quotations is a brief description of how these initial codes fit within focused codes and how these focused codes serve as building blocks for theory. These examples are intended to serve as brief illustrations of how the researcher moved from interview transcripts to initial codes to focused codes to theory.

The initial code *pricing people out* is defined as when some persons are priced-out of participating in reform programs because they cannot afford the fees. Three example quotations for this initial code are as follows:

> **Quotation 1**: There are huge racial disparities. You are much more likely to get into drug court if you are white. If you look at counties that have a pretty equal balance racially, you'll see most people who get charged with drug offenses are African American. There's a huge disparity there. You see more people charged with drug offenses from the African American community. That's not new. But when you look at the people who make it to drug court, it's completely flipped. I mean, it's like 60% white people who get into drug court, and a lot of that is just a reflection of poverty.

You have to pay to get into drug court. In Mississippi, you have monthly fees. You have to pay for all your testing that you have to do. If you can't afford it, then you're not in. Some drug courts managed to make that more equitable by, you know, the judges get to operate this fund however they choose. And so a lot of them use it to cover their expenses, and create scholarships with what's left to allow folks who can't afford it to get in. Some don't do that and sit on the money or spend it for other reasons.

Quotation 2: But then you turn around and look at 63% of people in drug court [are white]. And nobody could explain that. And I think that when you when you start looking at drug court and finding out all the fees, some of them were mandatory. They've made a way put a waiver in giving the judge authority to waive fees. There were people that if you had the money to pay for your assessment, you pay to get in. If you need to and can pay for treatment, and then you could get in drug court. And if you couldn't do that, then you couldn't get in drug court. So it wasn't a thing that drug court administrators were saying, you know, we don't like black people. We're not going to let you in. It was all the system was built up in a way that it was just going to be impossible for most of the black defendants to get in.

Quotation 3: If I'm putting you in a drug court, are you going get the treatment you need? Well, yeah, but you're going to have to pay for that. And can you pay for that? It's a pay to play type situation in

> Mississippi…Some of the drug courts, you know, if you don't have the money to get in, you're not getting in. Period.

The initial code *pricing people out* was one of the building blocks for the focused code by the same name, *pricing people out*. Like the initial code, the focused code of *pricing people out* reflected the idea that some persons are priced-out of participating in reform programs because they cannot afford the fees. This focused code was one of the building blocks for the Theory of Failure to Make Programs Affordable, which is the theory is that reform will not be fully implemented if potential participants cannot enroll in programs because of cost-prohibitive fees. The through-line for this process would look as follows: initial code - *pricing people out* → focused code - *pricing people out* → Theory of Failure to Make Programs Affordable.

The initial code *missing targets* is defined as applying a program to the wrong people. Three example quotations for the initial code are as follows:

> **Quotation 1**: Court and the focus of drug court has never been to get people clean and sober. The focus of drug court has always been to reduce recidivism and prevent crime. That's why we have it. We don't have it to monitor these people for 5, 6, 7 years to make sure they're not relapsing. Because you can certainly relapse in alcohol or drugs and not return to criminal behavior.

> **Quotation 2**: Well, the drug court is, the way it was originally designed, and the way that I think it's trying to be pushed by the Administrative Office of Courts, is that it is an alternative sentencing. And it's a court of last resort. What I mean by that is if I get charged with possession of

cocaine, or possession of meth, or even possession of marijuana – because we still we still charge people with felony possession of marijuana – those people if they're a first-time offender, they're not supposed to be in drug court, unless they have some type of record or pattern where they need to be in drug court. And so if you look at that, why is that? Well, some people would say they need to be in drug court because they have a drug problem. Well, if you put them in drug court, drug courts are more expensive than traditional probation. It's more expensive than some types of unsupervised probation, or even a misdemeanor type plea deal. And you're wasting resources. So you're adding costs to the criminal justice system. And you have someone that normally wouldn't be in drug court is now using these resources for people that we are trying to redirect from prison into drug court. Not put extra people into drug court that wouldn't be in prison in the first place.

Quotation 3: Well, there were problems in the old days with some of the ones that were tested out. And it was because sometimes the drug court was the only diversion program available to a judge. And it was suggested to me several times that let's say you might have some kid who was maybe from a prominent family, who was picked up on drug charges, and the judge might say, "Oh, well, we got to put him in the drug court." Was he appropriate for the drug court? Or not? Maybe or maybe not. But it's the only diversion program they've got. So sometimes there were some

questions about whether or not the people who were being put in the drug court were the best people to put there.

The initial code *missing targets* was one of the building blocks for the focused code *missing targets (people, programs, and places)*. This focused code reflected in part the idea that programs can be directed towards the wrong populations, and it was one of the building blocks for the Theory of Failure to Hit Targets. The theory is that programs directed to the wrong populations result in targets being missed and this serves as an obstacle to implementation The through-line for this process would look as follows: initial code – *missing targets* → focused code - *missing targets (people, programs, and places)* → Theory of Failure to Hit Targets.

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