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# Smart Decarceration: Guiding Concepts for an Era of Criminal Justice Transformation

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# Smart Decarceration: Guiding Concepts for an Era of Criminal Justice Transformation

## *Abstract*

*The era of mass incarceration, which made the United States the world's leading jailer, appears to be coming to an end. What is likely to follow is an era of decarceration, aimed at reducing the incarcerated population. In this working paper, we discuss the problems associated with mass incarceration and the current climate that is likely to make decarceration a reality. We discuss the importance of developing a "smart decarceration" approach—one that is effective, sustainable, and socially just. We then articulate interrelated goals for the era of decarceration, and offer guiding concepts that will help to meet these goals through transformation of the criminal justice system.*

**Keywords:** *Decarceration; mass incarceration; prison; jails; criminal justice reform*

## Background

The United States is at a unique moment in history. After nearly 40 years of exponential growth in the numbers of people incarcerated in jail and prison, it has become increasingly apparent that the era of mass incarceration is nearing its end. During this time, the criminal justice system evolved into a highly punitive system designed to distance people from society. It neglects the strengths of individuals and communities and generally leaves individuals worse off than before they entered the system. The consequences of this era are staggering: the United States is the world leader in incarceration with 2.3 million adults in jail or prison on any given day and an incarceration rate of more than 700 per 100,000 citizens (Pew Center on the States, 2008). Mass incarceration disproportionately affects vulnerable segments of the country's population. People of color, those in poverty, and those with behavioral health disorders are grossly overrepresented in U.S. jails and prisons. As a result, a ripple effect of mass incarceration has crippled poor and minority communities. Mass incarceration has become financially unsustainable and politically unpopular, and a broad spectrum of public figures is now motivated to reduce incarceration rates.

What will follow the era of mass incarceration? Growing evidence suggests it will be an era of decarceration (Jacobson, 2005; Petersilia & Cullen, 2014; Pettus-Davis & Epperson, 2015). Like its predecessor, this era will likely involve a lengthy and sustained process. Protracted processes and complex racial, economic, and political histories led to mass incarceration; therefore, the decarceration approach must not seek quick and simplistic methods to cut incarceration rates if it hopes to maintain sustainable reductions. Instead, to ensure effective and sustainable decarceration,

it must plan and do the difficult work of developing a “smart” approach—one that is evidence-driven and grounded in a social justice orientation.

### Goals and Guiding Concepts

For the country achieve effective and sustainable decarceration—hereafter referred to as *smart decarceration*—the following three goals must be accomplished:

1. Substantially reduce the incarcerated population in jails and prisons.
2. Redress the existing social disparities among the incarcerated.
3. Maximize public safety and well-being.

In this working paper, we first review the era of mass incarceration, its ripple effects, and the evidence that it is coming to a close. We then discuss what it means to be at the beginning of an era of decarceration, the challenges and opportunities of a criminal justice system in flux, and the importance of articulating the aforementioned goals and key strategies to achieve smart decarceration. We then present the following guiding concepts for how to achieve those goals and transform the criminal justice system, and ask key questions for each concept:

1. *Changing the narrative on incarceration and the incarcerated.* The smart decarceration approach must examine the utility and function of incarceration, challenge the existing view of currently and formerly incarcerated individuals, and actively welcome those individuals as leaders in decarceration efforts.
2. *Making criminal justice system-wide innovations.* Criminal justice transformation that leads to smart decarceration will require advances in all sectors of the criminal justice system, including law enforcement, court systems, jails and prisons, and community supervision.
3. *Implementing transdisciplinary policy and practice interventions.* Smart decarceration will be complex and comprehensive and will require integrating perspectives from multiple disciplines to produce substantive policy reforms and practice innovations.
4. *Employing evidence-driven strategies.* The smart decarceration approach must both generate new evidence for optimal reforms and use existing evidence to guide decision-making and program development. Methods must be integrated to continuously examine and assess the effects of policy and practice interventions, thus developing further evidence from which to act.

Applying these core concepts at the onset of the decarceration era will help transform the criminal justice system and inform the post-decarceration era. We conclude by offering some possibilities for what the post-decarceration era could include, depending on the transformation of the criminal justice system.

### The Era of Mass Incarceration

For nearly 40 years, the theme for the U.S. criminal justice system had been “growth.” Beginning in 1972, the annual prison and jail population increased dramatically and without exception for 37 years (Glaze & Parks, 2012). In that time, incarceration rates increased sevenfold, making the United

States the world leader in incarceration, both in numbers of prisoners<sup>1</sup> and in proportion of the incarcerated population (Travis, Western, & Redburn, 2014). The United States makes up just 5% of the world's population, but it houses a staggering 25% of its prisoners (Alexander, 2012). At the peak of incarceration in 2008, 2.3 million adults were incarcerated in a U.S. prisons or jails on any given day, at a cost of over \$50 billion annually (Schmitt, Warner, & Gupta, 2010). Though this rate of one in 100 adults incarcerated marks a historic benchmark, it captured only a cross section of prisoners—the daily prison population remains stable at nearly 1.5 million, but the daily jail census of around 700,000 does not adequately capture the more than 11.5 million individuals cycling through local jails annually (Minton & Zeng, 2015; Subramanian, Delaney, Roberts, Fishman, & McGarry, 2015). This means that about 13 million American adults—a startling one in 20—experience some form of incarceration each year.

There is a growing body of research that more fully explores the origins and dramatic effects of mass incarceration in the United States. Notably, the National Research Council of the National Academies commissioned the comprehensive report *The Growth of Incarceration in the United States: Exploring Causes and Consequences* (Travis, Western, & Redburn, 2014). The report assesses the evidence pertaining to mass incarceration and its effects, notes that the exponential growth in incarceration is due to the concentration of poverty and unemployment in U.S. cities, and indicates sentencing policy changes as a reaction to rising crime rates in the 1960s through the 1980s, which led to a more punitive political and social climate. Travis, Western, and Redburn (2014) also provide an in-depth account of the consequences of incarceration, including the individual effects of confinement; damaged health and mental health; diminished employment and earnings; and detrimental effects for children, families, communities, and society. Contrasting these multilayered ripple effects of incarceration with the uneven impact of incarceration on crime and public safety, the report's findings demonstrate that:

Given the available evidence regarding the causes and consequences of high incarceration rates, and guided by fundamental normative principles regarding the appropriate use of imprisonment as punishment, we believe that the policies leading to high incarceration rates are not serving the country well. We are concerned that the United States has gone past the point where the numbers of people in prison can be justified by social benefits. Indeed, we believe that the high rates of incarceration themselves constitute a source of injustice and, possibly, social harm. A criminal justice system that made less use of incarceration might better achieve its aims than a harsher, more punitive system (Travis, Western, & Redburn, 2014, p. 9).

### **Social disparities of mass incarceration**

Incarceration in the United States is a problem not only because of the numbers of persons incarcerated, but also because of who is most affected. Incarceration overwhelmingly affects people

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<sup>1</sup> We use the terms “prisoners” and “imprisoned” to refer to persons incarcerated either in local jails or in state or federal prisons.

of color, people in poverty and other forms of social disadvantage, and people with behavioral health disorders.

#### *Racial disparities*

Arrest rates for African Americans are double the national average, and African Americans face more severe charges and longer sentences than others with similar characteristics (Mauer, 2011; Snyder, 2012). Although African Americans make up only 13% of the general population, they comprise 40% of all prisoners (Pew Center on the States, 2008).

#### *Economic disparities*

Over half of prisoners were in poverty the year before their arrest and have little chance of rising out of poverty after incarceration (Wheelock & Uggen, 2005). Having a history of incarceration reduces men's annual income by 40% (Western, 2002; Western & Pettit, 2010). Homelessness among former prisoners is four to six times the rate of the general population (Greenberg & Rosenheck, 2008). Two-thirds of state prisoners do not have a high school diploma upon entering prison, and 44% of jail inmates have less than a high school education (Harlow, 2003).

#### *Behavioral health disorder disparities*

Given the War on Drugs' role in the growth of incarceration, it is not surprising that people with substance abuse disorders are disproportionately incarcerated. Nearly 1.5 million prison and jail inmates (65%) meet the criteria for substance use disorders, and an estimated 75% of prisoners are in need of substance abuse intervention; meanwhile, only about 11% receive any type of treatment while behind bars (National Center on Addiction and Substance Abuse at Columbia University, 2010).

The estimated prevalence of serious mental illnesses (e.g., schizophrenia, bipolar disorder, major depression) in prisons and jails is at least 14%, which is more than double the rate of serious mental illness in the general adult population (Fazel & Danesh, 2002; Steadman, Osher, Robbins, Case, & Samuels, 2009). This equates to more than 375,000 people with serious mental illnesses incarcerated on any given day, rather than living in community or therapeutic settings (Epperson et al., 2014). It is clear that the era of mass incarceration has ushered in the criminalization of behavioral health disorders.

These trends have led some to suggest that the term *hyperincarceration* better describes the ways in which incarceration disproportionately impacts based on class and race, opposed to *mass incarceration*, which implies that incarceration affects the population equally and uniformly (Wacquant, 2010).

### **Ripple effects of mass incarceration**

The historically high levels of mass incarceration are problematic for many reasons. Once a person has been incarcerated, their access to the conventional means of citizenry that promote desistance from crime can be permanently disrupted (Hagan & Dinovitzer, 1999). Persons with histories of incarceration are barred access to education, employment, housing, and other social and health

services available to the remaining general public (Legal Action Center, 2009). Instead of reforming incarcerated individuals, mass incarceration causes a number of ripple effects (e.g., recidivism, health concerns, family-related consequences) that also affect families and communities in addition to following incarcerated individuals over the course of their lives (Clear, 2007; Travis & Waul, 2003).

### *Recidivism*

Contrary to its purported deterrence and rehabilitative aims, incarceration is not effective at reducing criminal behavior for most. Nearly 77% of individuals released from prisons are rearrested for a new crime within five years (Durose, Cooper, & Snyder, 2014). Research demonstrates that even short-term incarceration in jail is associated with increased rates of criminal activity; low-risk defendants held two to three days during the pretrial phase are almost 40% more likely to commit new crimes before trial than defendants held less than 24 hours (Lowenkamp, VanNostrand, & Holsinger, 2013). The evidence generated by decades of recidivism research is clear: For the vast majority of individuals, mass incarceration does not increase public safety by reducing criminal behavior. In fact, the disruptive factors associated with imprisonment fuel the likelihood of future offending, creating a system in which people are perpetually trapped.

### *Health concerns*

The process of incarceration has been shown to exacerbate health conditions and increase the likelihood of disease acquisition and transmission (Baillargeon & Bradshaw, 2003; Freudenberg, 2006). Incarcerated individuals have disproportionately high rates of chronic health conditions and communicable diseases such as tuberculosis, Hepatitis C, and HIV. Similarly, many studies report upwards of 90% of people in jails and prisons have high rates of lifetime traumatic experiences (Teplin, Abram, & McClelland, 1996; Weeks & Spatz Widom, 1998; Wolff & Shi, 2012). Because imprisonment is a traumatic experience, incarceration can amplify the negative psychological symptoms of trauma and cause problems during and after incarceration. Few people receive adequate supports for health or mental health problems during or after incarceration. Incarceration has wide-reaching effects on one's life beyond health.

### *Family-related consequences*

Having a history of incarceration can affect whether an individual will be able to have a family. In many states, a person with any felony conviction is banned from fostering or adopting children—even their own relatives (Greenaway, 2002). Therefore, incarceration does not affect just the individual who is imprisoned; it also shapes the lives of people who have never engaged in crime.

Research shows that incarceration of a loved one can send a family into poverty; children of the incarcerated are thrust into a cycle of emotional, behavioral, and academic problems; and communities with high rates of incarceration suffer sustained economic and social deprivation (Clear, Rose, & Ryder, 2001; Mumola, 2000). Over half of incarcerated individuals are parents of minor children, and children with incarcerated parents are more likely to have behavioral and emotional problems and are at six times greater risk of later being incarcerated themselves (Glaze & Maruschak, 2008; Harrison & Beck, 2006). Poor and minority communities, where incarceration is often concentrated, suffer from indirect effects of incarceration (e.g., weakened family functioning,

disrupted labor force attachments, reduced collective efficacy, stigma) that further destabilizes communities already struggling with limited resources (Clear, 2007; Lynch & Sabol, 2004; Patillo, Weiman, & Western, 2004).

### The end of an era

Data indicate that, similar to the housing and dot-com bubbles, the incarceration bubble may be beginning to burst. Table 1 lists the numbers of individuals incarcerated in federal prisons, state prisons, and local jails, as well as the total incarcerated population per year from 2008 to 2013. Beginning in 2009, the total incarcerated population declined slightly after several years of plateau, and the decline has continued for five consecutive years (Glaze & Kaeble, 2014). Though this is a historic development, the setting-specific data tell a less consistent story. For example, the state prison population was reduced in 2010, 2011, and 2012, but the number of state prisoners increased in 2013 (Glaze & Kaeble, 2014). Despite average daily jail population reductions for four of the last five years, there has been a reduction in the federal prison population in only one year—2013. Although the recent changes in jail and prison populations are not consistent, they signify variability in the incarcerated population for the first time in a generation. This variability marks both an opportunity and a warning sign. The opportunity to reduce incarceration rates exists, but limited, underconceptualized, and underresourced efforts cannot compete with a nearly 40-year trend of persistently high incarceration rates.

Table 1. Numbers of Individuals Incarcerated in the United States by Year, 2008–2013\*

Year	Federal Prison	State Prison	Total Prison	Jail (Avg. daily pop.)	Total Incarcerated
2008	201,280 +	1,407,002 +	1,608,282 +	776,573 +	2,384,855 +
2009	208,118 +	1,407,369 +	1,615,487 +	<b>768,135 -</b>	<b>2,383,622 -</b>
2010	209,771 +	<b>1,404,032 -</b>	<b>1,613,803 -</b>	<b>748,553 -</b>	<b>2,362,356 -</b>
2011	216,362 +	<b>1,382,606 -</b>	<b>1,598,968 -</b>	<b>735,565 -</b>	<b>2,334,533 -</b>
2012	217,815 +	<b>1,352,582 -</b>	<b>1,570,397 -</b>	737,369 +	<b>2,307,766 -</b>
2013	<b>215,866 -</b>	1,358,875 +	1,574,741 +	<b>731,352 -</b>	<b>2,306,093 -</b>

\* + or – indicates an increase or decrease from that same category in the prior year. Any year-to-year reductions are in bold (Glaze & Kaeble, 2014).

What has led to these reductions in incarceration over the past five years? More importantly, what evidence indicates that this incarceration system in flux marks the end of an era of mass incarceration? First, as a result of the ample evidence that indicates the financial instability of the continued growth of incarceration, many states are calling for reductions in prison expenditures, which will require significantly reducing prison populations and the likely closure of facilities (Gottschalk, 2009; Kyckelhahn, 2011; Spelman, 2009). Second, a growing body of research demonstrates that incarceration has few positive effects on individual change, community stability, or public safety (Durose, Cooper, & Snyder, 2014; Pattillo, Weiman, & Western, 2004; Travis, Western, & Redburn, 2014; Wakefield & Uggen, 2010). Third, mass incarceration is increasingly viewed as socially unacceptable, as evidenced by now daily media reports criticizing the overuse of jails and prisons; the profit-seeking business of prison privatization; and the social justice implications of incarceration's effects on poor, vulnerable, and minority individuals and communities (Coates, 2014; Gopnik, 2012; Mauer & Cole, 2015). Last, these mounting factors seem to have culminated in the dwindling political will for "tough on crime" proincarceration policies and a new emphasis on criminal justice reform. On both sides of the political aisle and from those who once supported mass incarceration policies, there is growing consensus that reducing the incarceration population is needed and ultimately good for the country (Ford, 2015; Petersilia & Cullen, 2014). This unprecedented convergence of factors epitomizes a growing skepticism about the function and effectiveness of incarceration in the United States (Bosworth, 2011). Moreover, it signifies a unique period in history in which an era of decarceration is a distinct reality.

### **Articulating Goals for Smart Decarceration**

Reducing the overreliance on incarceration will require a substantial shift in how the entire U.S. criminal justice system operates. Articulating key goals for decarceration to realize this shift is an important early step. To achieve smart decarceration, the following goals must be accomplished.

#### **Goal 1: Substantially reduce the incarcerated population in jails and prisons**

The term *mass incarceration* is associated with the growth of state and federal prison populations. For example, recent incarceration research (Travis, Western, & Redburn, 2014) focuses primarily on individuals who spend a year or more in prison. Though the effects of long-term imprisonment are substantial, ignoring the importance of local jails will severely hamper smart decarceration efforts. Originally designed as pretrial holding facilities, jails have increasingly become indistinguishable from prisons in many respects. Because of long pretrial periods (some longer than two years) and prison overcrowding, people are serving longer sentences in jails. Though most serve a relatively short time in jail, there are seven times the number of people incarcerated in local jails than in prisons (Minton & Zeng, 2015; Subramanian et al., 2015). Even short-term jail incarcerations can disrupt various aspects of an individual's life (e.g., employment, family relationships, positive peer networks, community supports), and jail incarceration of even a few days can lead to future recidivism (Lowenkamp, VanNostrand, & Holsinger, 2013). For these reasons, reducing the overreliance on incarceration will require attention to jails in addition to prisons. Doing so will require complementary strategies that both reduce the flow of individuals into the front end of the system, and reduce or eliminate lengths of stay for those who face incarceration (Jacobson, 2005; Subramanian et al., 2015).



*A lesson from deinstitutionalization*

Defining a “substantial” reduction in the jail and prison population is a difficult task. In recent months, bold challenges have been made by multiple advocacy groups, some of which suggest that the prison population could be cut in half in the next 10 to 15 years.<sup>2</sup> Although this type of rapid reduction may be attractive to both prisoner advocates and states that wish to reduce correctional spending, a rapid and drastic reduction in the incarcerated population may prove to be unsustainable.

Lessons from history should be considered in this case. In 1963, President Kennedy issued a call to action to reduce the number of people with mental illnesses in psychiatric hospitals by 50% within a decade or two. Remarkably, with bipartisan support, the population of psychiatric hospitals and asylums dropped by 60%. Yet deinstitutionalization failed in many respects. Few mental health systems meet the needs of the communities they serve. Today, people with mental illnesses are more likely to be found in jails and prisons than in psychiatric hospitals, leading correctional facilities to be considered “new asylums” (Torrey, Kennard, Eslinger, Lamb, & Pavle 2010). Many would agree that rapid deinstitutionalization without full development of effective and sufficient community resources was a key contributor to the movement’s failings. The decarceration approach must not repeat the mistakes of the past.

In the era of decarceration, periods of extreme declines may be likely, but steady and consistent decreases over time would be more favorable, similar to the steady and consistent rise in incarceration over a four-decade period. Interestingly, the U.S. incarceration rate prior to the era of mass incarceration was very much in line with other industrialized western countries (Travis, Western, & Redburn, 2014). It could be argued that an appropriate target for long-term decarceration efforts would be to return to the pre-mass incarceration rate—roughly less than 200 per 100,000. But this marker could be misguided; if the United States overhauls its reliance on incarceration and the criminal justice system that fuels it, would even 200 per 100,000 people incarcerated an acceptable rate?

**Goal 2: Redress existing social disparities among the incarcerated**

Social disparities (e.g., racial, economic, behavioral) among incarcerated populations have become overwhelming in the era of mass incarceration. Such disparities stem from numerous causes, including systemic bias in court case processing (Kingsnorth, MacIntosh, & Sutherland, 2002), uneven policing in poor minority neighborhoods (Brunson & Miller, 2006), irregular sentencing practices (Bushway & Piehl, 2001), and, for some crimes, differential offending patterns (Sampson, Morenoff, & Raudenbush, 2005). To be socially just, the smart decarceration approach must not only reduce the number of incarcerated individuals, but also redress the disproportionate burden of incarceration on vulnerable and oppressed populations. This will require attention to the unique factors that lead to the overincarceration of people of color, people in poverty, and people with behavioral health disorders, and a commitment to remediate these factors.

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<sup>2</sup> See <http://www.justleadershipusa.org>, <http://www.aclu.org>; and <http://www.cut50.org>.

### **Goal 3: Maximize public safety and well-being**

For decarceration to be effective and sustainable, public safety must be maximized. Otherwise, retrenchment in incarceration policies would likely occur. Therefore, decarceration must involve more than just reducing incarceration; it must include the development of responses to crime and undesired behaviors to ultimately benefit all members of society. This is particularly the case for communities that have borne the burden of mass incarceration, resulting in exacerbated economic and social disadvantage (Clear, 2007).

Decarceration will only be effective, sustainable, and socially just if these three goals are simultaneously realized. It would be possible to substantially reduce the number of incarcerated persons, but maintain, or even increase, the disproportionate rates of imprisonment among people of color and people in poverty. Therefore, smart decarceration efforts must be held to an expectation to reduce disparities if the progress made in an era of decarceration is to be socially just. Clearly, if decarceration threatens public safety, the likelihood of a retrenchment in mass incarceration policies and practices is great. Strong attention to these three interrelated goals at the onset of the decarceration era is critical its success.

### **Guiding Concepts for Smart Decarceration through Criminal Justice Transformation**

Launching an era of smart decarceration will require a paradigm shift on how the criminal justice field views, prevents, and responds to crime. An applied, comprehensive approach to decarceration has not yet been developed. Also underdeveloped is the transformative work only possible through bringing together diverse disciplines, sectors, and levels of interventions. To bring about a transformative era of decarceration, the diverse disciplines of criminal justice must first develop some consensus around foundational concepts and principles that would guide smart decarceration.

Recognizing this need, Travis, Western, and Redburn (2014) offered four principles to limit the scale of incarceration and point toward new approaches: (1) *Proportionality* – criminal sentences should respond to the seriousness of the crime; (2) *Parsimony* – length of confinement should not be greater than necessary to achieve the goals of sentencing policy; (3) *Citizenship* – effects of imprisonment should not violate a person’s fundamental status as a member of society; and (4) *Social justice* – prisons’ collective effect should promote a fair distribution of rights, resources, and opportunities. Petersilia and Cullen (2014) similarly offered five principles to downsize prisons: (1) *Set inmate population caps* – states should articulate specific limits to prison capacity; (2) *Take recidivism seriously* – use risk assessments and data to carefully monitor recidivism; (3) *Reaffirm rehabilitation* – community corrections must be adequately resourced to be a fully viable option; (4) *Provide expert technical assistance to states and communities willing to downsize* – build the technical capacity for the emerging field of downsizing; and (5) *Develop a criminology of downsizing* – build a full literature and evidence base on downsizing prisons.

These principles offer important points to consider, but they are limited for developing a comprehensive guiding conceptual framework of smart decarceration. The principles Travis, Western, and Redburn (2014) put forth are quite broad and overarching, and the report does very little to suggest practical strategies for implementing these ideals. The principle of parsimony is

aimed at avoiding unnecessarily long and ineffective incarceration sentences, but it presupposes a system that still relies primarily on imprisonment as a response to crime. On its surface, that principle accepts the notion that incarceration is an appropriate response to a broad swath of crime and is silent on the detrimental effects of even a short incarceration sentence on individuals, families, communities, and budgets. Petersilia and Cullen focus more on specific policies to downsize prisons, but their principles do not fully acknowledge the need for a more robust set of effective replacements for incarceration. They suggest that the answers to reducing incarceration rest in the development of a field of criminology focused on prison downsizing. Although criminologists' expertise and institutional knowledge are vital to smart decarceration, a criminology of downsizing ignores the need for a multidisciplinary, comprehensive approach to overcome the complex problems of mass incarceration. Additionally, neither set of principles directly responds to the overwhelming problem of mass incarceration's disproportionate impact on people of color and vulnerable populations. In short, these principles are relevant and will likely help to moderately curtail incarceration in the short term, but they are not sufficient on their own to achieve the kind of transformation necessary to achieve the goals for smart decarceration.

Building on these principles, this section defines concepts to stimulate applied policy and behavioral intervention innovations that could ultimately transform the criminal justice system. These concepts are not intended to offer immediate, specific answers to the challenges of decarceration; rather, they lead to important questions whose answers will build a framework and strategy for smart decarceration. With an established framework, decarceration efforts can be tracked using a range of benchmarks of success. We propose four guiding concepts to achieve the goals of smart decarceration and to transform the criminal justice system. We also ask key questions to consider as social innovations propelling smart decarceration are established.

### **Guiding Concept 1: Changing the narrative on incarceration and the incarcerated**

#### *Reconsidering the utility of incarceration*

The prevailing approach to crime over the past four decades has been to rely first and foremost on incarceration. For both major and minor offenses, the initial response is to take a person into custody; although some states have expanded their use of “desk appearance tickets,” booking into local jails is still the most common approach by law enforcement to most criminal offenses (Snyder, 2012). This practice illustrates a primary assumption—incarceration increases public safety by removing the alleged offender from society. For persons charged with or convicted of violent crimes (e.g., murder, rape, robbery, assault), there may be some validity to the argument that incarceration is effective at incapacitation, or preventing those individuals from harming others. However, in 2010, violent offenses comprised about 4% of all arrests nationwide; by comparison, nearly 30% of arrests were for drug or property crimes (Snyder, 2012). In the same year, nearly 47% of state prisoners and over 90% of federal prisoners were serving time for nonviolent offenses (Snyder, 2012). In addition, nearly two thirds of individuals held in local jails are unconvicted (Minton & Zeng, 2015), and the jail population is made up primarily of individuals with nonviolent charges (Subramanian et al., 2015). These statistics suggest that a large proportion of those incarcerated in U.S. jails and prisons do not pose an imminent risk for violence in their communities, and there is potentially little public safety value in incapacitating these individuals. Even for those convicted of violent offenses, the

notion of incapacitation is not permanent; at least 95% of state prisoners will be released back into the community (Hughes & Wilson, 2002).

A second commonly held assumption about the utility of incarceration is that it reduces the likelihood of future illegal behavior. Whether by providing rehabilitative services or by administering deterrence to crime via punishment, the notion of the term *corrections* suggests that incarceration corrects or alleviates one's propensity toward criminal behavior. If this assumption held true for all or even most incarcerated individuals, it could be argued that incarceration serves a public safety purpose, even for those nonviolent offenders who do not require incapacitation, by serving to reduce future criminal offending. However, years of research and data actively refute this assumption. Multiple studies have highlighted the abysmal recidivism rates for former prisoners. For example, Durose, Cooper, and Snyder (2014) found that over three-fourths of released prisoners are rearrested for a new crime within five years. Other recent research demonstrates that even short-term incarceration in jail is associated with increased rates of criminal activity; spending two or three days in jail has been linked to increased likelihood of future offending compared to jail stays of less than 24 hours (Lowenkamp, VanNostrand, & Holsinger, 2013). This body of research underscores the fact that incarceration, at best, does not reduce recidivism and, at worst, actually increases the risk for future offending.

Assumptions associated with the utility of incarceration drove legislation and criminal justice policy and practice for the past 40 years, resulting in the era of mass incarceration. For an era of smart decarceration to occur, these assumptions must be tested and replaced with more evidence-based appraisals of incarceration's utility. The nation has embraced the notion that incarceration is *the* appropriate tool to make people behave in desired ways and follow the law. This reliance on incarceration has muted the nation's creativity to promote socially desirable behaviors and deafened its attention to the causal factors of addiction, debt, and crime. We suggest that the smart decarceration approach views incarceration as an effective tool only for incapacitation of individuals at high risk of violence who most threaten public safety.

*Amplifying perspectives of currently and formerly incarcerated individuals*

Historically, currently and formerly incarcerated individuals have been systematically disenfranchised regarding criminal justice reform efforts. However, individuals with incarceration histories have first-hand knowledge of the complexities of criminal justice involvement; therefore, they have unique perspectives on what is necessary to reduce criminal activity. Peer-led and -informed interventions are widely accepted in other areas of rehabilitation, including substance abuse (Liddle, Rowe, Dakof, Ungaro, & Henderson, 2004); health and mental health (Davidson, Chinman, Sells, & Rowe, 2006; Dennis, 2003; Sells, Davidson, Jewell, Falzer, & Rowe, 2006); veterans, first responders, and other job classifications (Chinman, Shoai, & Cohen, 2010; Levenson & Dwyer, 2003); and persons with disabilities (Corrigan, 2006; Haring & Breen, 1992). The smart decarceration approach must view current and former prisoners not as merely objects for intervention, but as key experts in crafting effective solutions. This will require a philosophical shift about how "offenders" are viewed. Instead of a mark of failure and mistrust, experiences with the criminal justice system both inside and outside of incarceration settings should inform targeted social innovations.

### *Key questions*

The following questions begin to explore how smart decarceration can rethink incarceration and the incarcerated:

- How can the criminal justice system shift its thinking away from incarceration as the default response to crime? Even the language—“diversion” and “alternatives to incarceration” and “suspended sentence”—implies that incarceration is what is supposed to happen, but another approach will be tried out in its place. For what offenses (both misdemeanors and felonies) could incarceration not even be an option? What needs to change to relinquish the current beliefs about incarceration?
- What if, as in medical and mental health care, we took a “level of care” approach to criminal justice responses, in which incarceration is the last resort—one that required justification? How could the criminal justice system develop a hybrid between determinant and indeterminant sentencing (neither of which has worked very well) wherein reassessment happens over time to determine optimal sentence length? How could it identify and avoid diminishing returns of incarceration?
- What can currently and formerly incarcerated persons tell us about the development and implementation of social innovations aimed at criminal justice reform? What punishments would these individuals have chosen as the best response to their own offenses? How does the criminal justice system identify and develop peer-led strategies to reduce recidivism, increase community supports, and prevent crime? What policies and practices will acknowledge that the era of mass incarceration was misguided, and reduce levels of stigma for those who have been most affected?

### **Guiding Concept 2: Making criminal justice system-wide innovations**

Much of the discourse on reversing mass incarceration has been focused on state and, to a lesser extent, federal prison systems. Although prisons do serve as the most visible and intensive manifestation of mass incarceration, they simply reflect the symptoms of an overall system of policies and practices that support mass incarceration. In addition to developing policy and legislative reforms, smart decarceration will require social innovation at all levels of the criminal justice system. The current criminal justice system tends to function in a siloed manner, with each governing sector operating independently without a thorough understanding of that sector’s effects on other parts of the criminal justice system. Each sector of the criminal justice system has played a part in sustaining mass incarceration, and transforming aspects of each sector will be necessary to achieve smart decarceration.

#### *Law enforcement*

Law enforcement represents the entry point into formal criminal justice involvement. For any person who ends up incarcerated in jail or prison, there was first some type of encounter or interaction with law enforcement, namely police. As such, police practices and policing policies play

an important role not only in the number of persons arrested, but also the demographic and community characteristics of those individuals. Studies have shown that neighborhoods with similar crime levels may experience very different arrest and incarceration rates, driven mostly by the level of policing presence and monitoring of the neighborhood (Brunson & Miller, 2006; Weitzer, 2000). Police also employ a significant amount of discretion in their daily duties, regularly making decisions on what neighborhoods and blocks to patrol; whom to stop, question, and detain; and whether to charge an individual with a crime and, if so, the particular offense (Brown, 1988). Ultimately, in many cases, police are faced with the important decision of whether to formally arrest an individual, or to use an alternative intervention, whether a standardized, planned alternative to incarceration or by using a case-driven substitute for arrest.

As the formal law enforcement arm of the judicial system, prosecutors are an equally key contributor to the era of mass incarceration, as well as potential change agents in the new era of decarceration. Prosecutors make decisions daily that have great impact on the use of incarceration, including whether and what charges to file on a defendant, types of sentences to recommend for those convicted of a crime, and what penalties (including possible jail or prison incarceration) will be included in plea agreements (Reinganum, 1988; Smith & Levinson, 2011). However, prosecutors are often viewed as an isolated arm of the judiciary, operating independently of other court offices, and perhaps with the intention of leveling the most severe penalties possible (Barkow, 2013). Prosecutorial decision-making and what drives the perceived culture of punishment is woefully understudied. In recent years, there is a growing recognition of the critical role prosecutorial discretion plays in sustaining mass incarceration and reforming prosecutorial practices to advance decarceration (Henning, 2013; May, 2015; McLeod, 2012).

### *The court system*

The court system has played a major role in mass incarceration, and its role in advancing smart decarceration cannot be minimized. During the adjudication phase of criminal justice processing, multiple actors in the court system make key decisions on every criminal case—decisions that ultimately determine whether and to what extent incarceration is an option. Given that the court system has evolved into one in which 90% to 95% of cases reach a disposition by plea agreement, it is critical that judges, defense attorneys, and prosecutors, as well as a variety of court staff, begin to work together to intentionally reverse the hasty decision to incarcerate (Devers, 2011). Instead, they must develop and adopt a range of dispositional outcomes that do not include incarceration, and there must be a commitment within the court system to prioritize these alternatives unless the threat to public safety is so great that incarceration is warranted.

Perhaps the lowest hanging fruit in the court system that could have substantial impact on the jail population is the increasingly popular topic of bail reform. Over 60% of persons in jail are not convicted of their current charge, but are rather waiting in jail for their court hearing (or other disposition) because they cannot afford to pay expensive bail (Minton & Zeng, 2015). For many, this dilemma equates to individuals sitting in jail long enough to enter a guilty plea, with the agreement that the time that they have served will be a sufficient penalty (Subramanian et al., 2015). In effect, these individuals have paid the price for their alleged offense before ever being convicted of it. For others who are desperate to return to their homes and communities, predatory bail/bond agencies

may be solicited, which further subjects the individual to financial hardship and targeted supervision and coercion by “bounty hunters” with very little training and oversight. For these reasons, substantially reforming bail policies and procedures is an important first step for the court system to take in a move toward decarceration (Hutchinson, 2015).

### *Prisons and jails*

In the era of mass incarceration, prisons and jails have become veritable warehouse facilities, brimming with millions of individuals who come into contact with the criminal justice system. As a result, the “correctional” intention of prisons and jails fall largely to priorities of institutional safety and social control. There simply are not adequate resources to provide incarcerated individuals needed rehabilitative treatment and interventions, because resources are being allocated to basic confinement needs (Henrichson & Delaney, 2012). Prisoners with drug problems are half as likely to be receiving treatment today in prison as they were in 1990 (National Center on Addiction and Substance Abuse at Columbia University, 2010). Those exiting jails and prisons are reentering communities with fewer individual skills and social supports than they had when they entered, which leads to high risk for recidivism and reincarceration (Hughes & Wilson, 2002).

In the coming era of decarceration, prison and jail sentences should be rendered only when it is determined that nothing less restrictive can be used without compromising public safety. When that goal is realized, the remaining incarcerated individuals will be those at the highest risk to public safety, but the population will be substantially smaller. This reduction will allow for incarceration to serve its ultimate utility, incapacitation, alongside the facilitation of evidence-driven interventions that will aim to reduce criminal risks and potential threats to public safety. For those who would remain in incarceration settings, specific interventions could be tailored to their risk for violence and reoffending, thus improving public safety upon their release. Cost savings from a smaller incarcerated population would be reinvested in research and development of social innovations and community supports to prevent the likelihood of contact with the criminal justice system.

### *Community supervision*

Community supervision, namely probation and parole, are strategies the criminal justice system uses to either shorten the amount of time that an individual spends incarcerated, or to replace an incarceration sentence altogether. In the era of mass incarceration, probation has been the segment of the criminal justice population that grew at the fastest rate, and of the approximately 7 million individuals currently involved in the criminal justice system, the vast majority, nearly 5 million, are on probation and parole (Glaze & Bonczar, 2007; Petersilia, 1997). Community supervision was originally meant to be an alternative to incarceration, and an opportunity to provide supportive, rehabilitative services to individuals and facilitate their positive contributions to their communities. Unfortunately, the exponential growth of community supervision, particularly probation, resulted in overwhelming caseloads (often more than 100 per officer), which renders the facilitation of individually-tailored rehabilitative services nearly impossible (Maruschak & Parks, 2012; Petersilia, 1997). Additionally, the use of incarceration as a consequence for technical violations of probation and parole hasten the process to incarceration. In fact, about 16% of people exiting probation each year do so because of incarceration for a new offense or probation revocation (Maruschak & Parks,

2012), and nearly 40% of parole terminations are for unsatisfactory reasons, the bulk of which result in reincarceration (Glaze & Kaeble, 2014). For many, probation and parole have become nothing more than a waiting room for reincarceration (Epperson, Canada, Thompson, & Lurigio, 2014).

The smart decarceration approach must include an overhaul of community supervision to maximize its rehabilitative aims. Resources and incentives should be aimed at helping clients develop skills and supports that will increase their prosocial community involvement and reduce their likelihood to reoffend. When clients struggle with community supervision, interventions other than incarceration must be made available, unless there is an imminent threat to public safety. Community supervision should occur in the individual's community, rather than office-based centralized departments, where there are logistical barriers to community supervision staff understanding neighborhood supports and resources.

### *Key questions*

The following questions can guide criminal justice professionals as they work to innovate towards the goal of decarceration:

- How can the criminal justice system develop a better understanding of what part each sector plays in contributing to mass incarceration? What changes can be made to the incentive structure that favors incarceration at nearly every sector?
- What practices can be articulated for each sector that reflect the goal of avoiding unnecessary incarceration? How can we create more exit points throughout the criminal justice system versus pipelines to jail or prison?
- What strategies will minimize baton passing from law enforcement to courts to incarceration with individual offenders and instead move toward integrated action?

### **Guiding Concept 3: Implementing transdisciplinary policy and practice interventions**

#### *The landscape of policy and practices affecting mass incarceration*

Over time, both policy and practice developments affected the scope of mass incarceration. Legislation has clearly played a role in increasing the numbers of individuals eligible for incarceration and the length of their imprisonment. Mandatory minimum laws typically associated with the War on Drugs imposed harsh sentences on particular drug offenses such as possession of certain quantities of crack cocaine. Civil disability laws that mushroomed in the 1980s and 1990s had a drastic impact on those with felony convictions, governing where they could live, work, reside, vote, and how they could build a family. The Violent Crime Control and Law Enforcement Act of 1994, the largest crime bill in the nation's history, had significant effects on states' sentencing policies. By the end of the 20th century, as a result of financial incentives in the bill, most states adopted Truth-In-Sentencing laws that required prisoners to serve 85% of their sentences behind bars regardless of good behavior or other mitigating circumstances (Sabol, Rosich, Mallik-Kane, Kirk, & Dubin, 2002; Turner, Greenwood, Chen, & Fain, 1999). "Three strikes" laws, which have been established by 28



of 50 states, require extended prison sentences, often life imprisonment, for persons with multiple felony convictions (Benekos & Merlo, 1995).

Unfortunately, as the net widened for those who came into contact with the law and went to jail or prison, there was not substantial development of coherent and effective practice interventions to address the needs of the expanding incarcerated population. Still affected by the rejection of rehabilitative practices in the 1970s, the bulk of fiscal and intellectual resources and efforts went toward punishment and so called deterrence throughout the 1980s and 1990s (Garland, 2001; Martinson, 1975). At the same time, neighborhood and school focused drug and violence prevention efforts emerged to reduce the funnel to incarceration such as “just say no” programs, neighborhood watch groups, “weed and seed” campaigns, and community policing (Trojanowicz & Bucqueroux, 1990). Once people came into contact with the law, there was some effort to divert minor offenders away from courts and to engage in restorative justice efforts once incarcerated or nearing release. However, these efforts were not uniformly experienced and those from vulnerable and marginalized groups were less likely to benefit (Rosenbaum, 1994).

#### *Transforming policies and practices for smart decarceration*

The policies and practices that contribute to mass incarceration have been an extremely costly experiment—40 years of over \$50 billion per year, plus significant human and community resources (Spelman, 2009). To develop a transformative, smart decarceration approach, the same level of fiscal, political, human capital, and community investment that allowed mass incarceration to flourish is needed, at least initially (smart decarceration is likely to save money over time, but perhaps not in the short term). Smart decarceration requires much more than simply reducing the prison and jail populations. As evidenced by the deinstitutionalization of psychiatric hospitals, it is not necessarily difficult to empty out institutions. It is, however, a challenge to develop multiple systems to receive, assist, and support those who would have been previously institutionalized. To be successful, the smart decarceration approach must build the capacity to respond to the devolving of jails and prisons by promoting behavioral and primary health, housing, education, employment, and civic opportunities. Developing the tools and approaches to achieve capacity-building will require the perspectives of those from many disciplines, sectors, and well beyond criminal justice and corrections. Additionally, the smart decarceration approach must develop an array of replacement interventions for incarceration. It would be insufficient to simply not incarcerate and hope that undesired behaviors will be discontinued.

#### *Developing transdisciplinary strategies*

The smart decarceration approach rejects the notion that criminologists, criminal justice, and corrections professionals should be solely responsible for reversing mass incarceration. Rather, it promotes transdisciplinary approaches that combine perspectives from multiple disciplines not to just describe the current landscape, but also to generate a *futurescape* of public safety and well-being. Transdisciplinary perspectives are necessary to redefine and reconsider what constitutes truly criminal behaviors, what symptoms of public health crises are, what kinds of behaviors police and practice innovations can prevent, and when it is truly necessary to confine human beings. Finding these answers will require more than just identifying the key directions for change or success. The

smart decarceration approach will need to understand the economic formulations for creating and supporting systems of care and change. When rehabilitation is needed, it is important to understand how to best move people through the criminal justice system with the least harm to individuals and communities upon release. Existing paradigms and small adjustments to existing approaches would not achieve these aims—new perspectives, transformed approaches, and transdisciplinary paradigms are needed to achieve smart decarceration.

### *Key questions*

These key questions can guide the criminal justice system as it works to implement transdisciplinary policy and practice interventions to achieve smart decarceration:

- How can policy and practice interventions move beyond an individual perspective to engage with social and environmental risk factors? What strategies will enhance synergies between policy and practice interventions? What does a continuum of “incarceration replacement” interventions look like? Who is best equipped to implement and facilitate them?
- How can transdisciplinary innovations be fostered and replicated? What disciplines have important contributions to make to smart decarceration, but may have been previously ignored? Are any areas of current practice immune from the need for transdisciplinary reforms?

## **Guiding Concept 4: Employing evidence-driven strategies**

### *The problems with not responding to evidence*

Much of what led to mass incarceration was the enactment of policies and practices based on political motivations, reactionary approaches, and trendy (but not grounded) solutions. Despite the enormous financial and social costs of mass incarceration, and decades of research that demonstrate how the majority of individuals exiting prison will return, it is perplexing that a unified call to reduce incarceration rates has only recently occurred. What other social intervention has a cost of over \$50 billion annually, a failure rate of 60% to 75%, and has been tolerated for nearly four decades? Moreover, the majority of policies and practices that fostered mass incarceration were implemented and sustained without proper evaluation, and were not subject to discontinuation in spite of poor outcomes.

### *Privileging evidence in smart decarceration*

In contrast, the smart decarceration approach must be evaluative in nature, continuously assessing the effects of interventions at multiple levels. Social innovations should be based on existing evidence from multiple disciplines about what works to prevent the initiation and recurrence of crime. In this sense, new solutions that emerge will be based on past evidence of risk and protective factors for criminal behaviors, the needs of people affected by incarceration, and the effectiveness of current intervention approaches.

However, relying on past evidence alone would be insufficient. Smart decarceration requires rigorous testing and timely incorporation of emerging evidence. New solutions should be continually evaluated over time with no true endpoint. Instead, built into any new intervention should be an expectation that people and systems evolve and therefore approaches must adapt and respond accordingly. Smart decarceration innovations should include mandated program, policy, and evaluation cycles. Interventions should be expected to undergo needs assessments and evaluations of theory, logic, process, outcomes, and efficiency. To uphold the evidence-driven principle, qualified and applied researchers should always be involved in intervention development. Interventions should strive to achieve the highest scientific standards. The perceived success and proliferation of social innovations should be based primarily on their effectiveness, not on extraneous motivators. In short, science must drive the process of smart decarceration.

### *Key questions*

The following key questions will ensure that smart decarceration approaches foster and uphold the evidence-driven strategies:

- How can decarceration evaluation support a range of outcomes that lead to smart decarceration goals? What are alternative definitions of success and failure beyond recidivism? How can evaluation best inform incremental modifications, tailoring and adapting interventions opposed to canned dissemination or disregarding the intervention altogether? How can the approach develop and formalize the principle of responsivity in its research?
- What if decarceration interventions represented state-of-the-art research and evaluation instead of criminal justice's history of lagging behind? How can expectations for evaluation and responding to evidence be incentivized? What will bring the best scientific minds to study innovations in decarceration?

### **Post-Decarceration**

What will follow the era of decarceration? If smart decarceration is able to simultaneously (1) substantially reduce the incarcerated population; (2) redress existing social disparities among the incarcerated; and (3) maximize public safety and public well-being using the aforementioned guiding principles, the post-decarceration era will be one that can move beyond primary goals of undoing the damages of mass incarceration. A post-decarceration era would likely be one in which the criminal justice system is smaller, more nimble, and focused on building on strengths rather than an all-encompassing punishment approach. The post-decarceration era could be one in which communities are well-equipped and positioned to prevent crime and support the needs of their members. In short, the work we do in the decarceration era, if successful, will prepare us for an era focused on rehabilitation and prevention. Conversely, if the era of decarceration is not successful, the United States could enter a renewed era of hyper incarceration and a retrenchment of punishment-oriented approaches.

## Conclusion

The emerging era of decarceration holds both great promise and considerable gravity. Our intention in this paper is to note that the decarceration era is likely to be a prolonged one, in which the primary task is to not only reduce the use of incarceration, but to develop an effective, sustainable, and socially just set of policy and practice innovations that will promote public safety and well-being. In that spirit, the guiding concepts we offer are meant to spur discussion, questions, and innovation that will drive smart decarceration. The beginning of the era of decarceration marks a chance to transform the way criminal justice operates in the United States. To do anything less would be an unthinkable waste of an historic opportunity.

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