

Connecticut at the Crossroads:

COVID-19, the State Budget Crisis and the Path Towards Decarceration, Public Safety and Community Investment

A White Paper on Criminal Justice Policy



**UNIVERSITY
NETWORK
FOR HUMAN
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Table of Contents

I. Executive Summary: COVID, Incarceration and State Policy	4
II. Policy Recommendations	9
III. Decarceration during COVID-19: Trends in the Northeast in 2020	15
A. COVID-19 and the Finances of the State Prison System	15
B. Reductions in Incarceration during 2020: a continued trend	16
IV. International Standards and Best Practices	28
A. Alternatives to Imprisonment: Guidelines from the United Nations	29
B. Conditions of Detention	31
C. Participation and Human Rights	40
D. The German Prison System: Emphasis on Non-Carceral Responses	44
E. Norway: Humanization and Dynamic Security in Prisons Reduces Recidivism	55
F. Restorative Justice: Lessons from the US, Canada and Beyond	61
V. Historical Criminal Justice Trends and Conditions in the US, the Northeast, and Connecticut	70
A. Mass Incarceration in the United States Over the Last Half-Century	70
B. Mass Incarceration in the United States Today	73
C. Criminal Justice Reform in Connecticut in the 2000s	75
D. Trends in Crime and Detention in the US, Connecticut, and the Northeast	83

I. Executive Summary: COVID, Incarceration and State Policy

COVID-19 has brought death, severe illness and destabilization to the world, the United States and the state of Connecticut. Throughout the United States, the effects of the pandemic have been felt acutely by those in jails, prisons and penitentiaries. Advocacy groups have charged authorities with failing to provide minimally adequate care for those in detention.¹ The collective response to COVID-19 devastated thousands of detainees and staff in detention centers around the country, demonstrating the inherent danger in mass warehousing human beings. As of mid-December, some 20% of those incarcerated had been afflicted by COVID-19, more than 275,000 people in the US, with 1,738 deaths reported.² In Connecticut state facilities, roughly one in five incarcerated people had been infected with the COVID-19 virus by December 2020.³ The figures for those incarcerated in Connecticut and nationally are roughly four times the national average for those not in detention centers.

¹ A report by the ACLU and the Prisons Policy Initiative asserted that states had failed to heed warnings about detention centers, which were potential “petri dishes” for COVID spread, concluding that this failure constituted “gross negligence” in their treatment of incarcerated persons. See Jen Christensen, “States engaged in ‘gross negligence’ in Covid-19 response in jails and prisons, new report finds,” CNN June 25, 2020, available at <https://www.cnn.com/2020/06/25/health/state-response-covid-jails-prisons-trnd/index.html> (last visited December 20, 2020).

² “A State-by-State Look at Coronavirus in Prisons,” Dec. 18, 2020, The Marshall Project, available at <https://www.themarshallproject.org/2020/05/01/a-state-by-state-look-at-coronavirus-in-prisons> (last visited December 20, 2020).

³ COVID-19 Behind Bars Data Project, UCLA Law, available at <https://uclacovidbehindbars.org/states/connecticut> (last visited December 21, 2020).

As we begin 2021, Connecticut faces a severe budget crisis—indeed, the most severe in decades—as a result of the reduction in revenue and the increase in vital expenditures during the COVID-19 pandemic. In September 2020, the Connecticut Office of Policy Management projected a deficit for the upcoming year totaling over two billion dollars (\$2,024,900,000 USD)⁴ Shortly thereafter, the Office of Fiscal Analysis projected that, over the next two years, this deficit would get worse: Connecticut was expected to be 4.3 billion dollars in the red by the end of Fiscal Year 2023.⁵ In October 2020, new projections were more hopeful, primarily due to the recovery of equities in which roughly one third of the state’s resources are tied.⁶ October estimates reduced the projected shortfall to \$1.3 billion. While estimates vary, observers agree that 2021 and the years beyond are likely to involve deficits and financial hardship.

This financial crisis will not spare the criminal justice system and detention centers in the State. Curiously, COVID has made manifest the most promising potential solution for the financial reckoning facing prisons: decarceration and reinvestment outside detention. While COVID has spread through detention centers, it has simultaneously led to a rapid reduction in the overall incarceration rate in the state, intensifying a decade-long trend. By November 2020, the

⁴ Letter to the Comptroller, Sept. 20, 2020, Office of Policy and Management, available at https://portal.ct.gov/-/media/OPM/Budget/ComptrollerLetter/FY2021/FY_2021_SEP_21_2020_Comptroller_Letter.pdf

⁵ Fiscal Accountability Report FY21-FY24, Nov. 20, 2020, Connecticut General Assembly Office of Fiscal Analysis, available at https://www.cga.ct.gov/ofa/Documents/year/FF/2021FF-20201120_Fiscal%20Accountability%20Report%20FY%2021%20-%20FY%2024.pdf

⁶ Keith Phaneuf, “Surging tax receipts take a huge chunk out of state’s projected budget deficit Increase chances officials can escape the pandemic without a major state tax hike,” *CT Mirror*, available at: <https://ctmirror.org/2020/10/20/surging-tax-receipts-take-a-huge-chunk-out-of-cts-projected-budget-deficit/>

incarcerated population in Connecticut had fallen to 9,302 people, a decrease of more than 50% from the February 2008 prison population of 19,894.⁷ As we detail in the pages that follow, rates of incarceration in other states in the Northeastern US have experienced a significant decline since the onset of the national (and global) COVID-19 pandemic. Connecticut now faces a budget crisis with an unexpected silver lining: reduction in the prison population provides the state an opportunity to shift further from costly policies of mass incarceration. Indeed, as Department of Correction Commissioner Ángel Quiros flatly stated in October 2020, “Let me be clear: there will be facility closures in the upcoming budget years 21-22 and 22-23.”⁸

In this regard, it must be noted that Connecticut has been and continues to be a national leader in prison reform, having taken important steps not only to reduce high levels of incarceration, but also to humanize detention centers, create evidence-based policy bodies (such as the State Sentencing Commission), and focus investment in reentry programs. As this paper argues, this focus—on decarceration and successful reentry—has proved to be more effective in ensuring citizen security in the state, reducing recidivism and lowering costs than the mass incarceration model. These factors—financial, practical, humanitarian—all point toward the urgent need to reduce the use of incarceration in our criminal justice system.

⁷ See this report, “Trends in Detention in the US, Connecticut, the Northeast Region, 2011-2020.”

⁸ “New DOC Commissioner Looks to Close Prisons,” Hugh McQuaid, Oct. 27 2020, available at https://www.ctnewsjunkie.com/archives/story/20201027_new_doc_commissioner_looks_to_close_prisons/ (last visited December 20, 2020).

The existing status quo, while an improvement on the situation a decade ago, is still in transition. Faced with the current financial crisis, the state finds itself at a crossroads: one path involves a continuation of outdated policies that in the past led to mass incarceration. This path would lead to continued financial investment in the personnel and infrastructure of a system that is expensive, overly punitive and ineffective. The alternative involves seizing the opportunity presented by the gradual (and more recently, sudden) move away from mass incarceration. This alternative offers the state the transformational possibility to humanize the criminal justice system, reduce costs, and improve outcomes for society as a whole and the communities most directly affected, in particular. The current moment represents an important decision point in this regard, given not only the reduction in the prison population that has been occurring, but also the impending retirement of scores of correctional officers, whose positions—rather than being renewed without need—may be repurposed. In other words, the funds that might be dedicated to renewing these posts, which are no longer necessary given the decrease in prison population in the state, might be used to invest in alternatives to incarceration, humane prisons to the extent detention centers are strictly necessary, and investment in the reentry of those returning home from prison.

This white paper draws on the experience of Connecticut's dynamic programs, comparative studies with other jurisdictions, including examples from Germany and Norway, as well as a review of studies on the efficacy of restorative justice. We also consider and apply international human rights standards in the areas of criminal justice, detention and citizen participation.

Based on all this, we recommend a course that holds the potential to reduce violent crime, humanize the criminal justice system, improve post-detention outcomes for those in conflict with the law, and save substantial resources that could be more effectively invested in communities affected by social conflict and scarcity.

II. Policy Recommendations

As this white paper argues, given its high cost and limited efficacy, prison must be used as a last resort and only in those instances in which incarceration is necessary. For those incarcerated, the primary goal of detention must be rehabilitation with an eye to successful reentry, post-release. Indeed, as the Connecticut Prisons Manual affirms, the mission of the Department of Correction is to “provide safe, secure and humane supervision of offenders with opportunities that support restitution, rehabilitation and successful community reintegration.”⁹ Connecticut prisons must, at the very least, be held to the state’s own proposed standards. Prisons must focus on rehabilitation, moving away from severe, punitive methods. The questions we raise in this white paper are the following: How may Connecticut best implement rehabilitative, ethical standards in its detention and related policies? That is, how should the state allocate resources between detention centers (as well as within detention centers) and other social investments focused on those in conflict with the law? Which programs should be prioritized? Which ones should be phased out? What lessons may be learned from Connecticut’s own experience? From international standards? From comparative experience?

As Connecticut’s legislative history shows, reinvestment programs not only lead to decreases in crime and incarceration, but they are also the most financially sound policy options.¹⁰ Consider, in this regard, Connecticut’s TRUE Program as well as the Justice Reinvestment Initiative (JRI).

⁹ <https://portal.ct.gov/-/media/DOC/Pdf/PDFReport/ClassificationManualLibraryCopypdf.pdf>

¹⁰ See also Section V of this report.

The state witnessed a decrease in crime rates, arrest rates, and incarceration rates after implementing rehabilitative, collaborative, and/or reinvestment programs. Notably, while crime rates, arrest rates, and incarceration rates decreased so did recidivism rates. Rehabilitation offers formerly incarcerated people opportunities for employment, and assistance with societal reentry, in a community setting. By reinforcing its commitments to resocialization and restorative justice, Connecticut can reduce its incarcerated population, decrease recidivism, spend resources more efficiently, and reaffirm its position as a leader in criminal justice reform during and after the COVID-19 pandemic.

To achieve these goals, we recommend the following:

1. That the state of Connecticut establish a renewed Justice Reinvestment Initiative.

Following recent reinvestment models used elsewhere, this reinvestment initiative would have two key features.¹¹ First, the initiative would aim to cut costs associated with mass incarceration through, for example, closing prisons, reducing prison staff, and reducing the number of people moving through the costly trial system. Second, a proportion of that money would be reinvested in measures meant to reduce recidivism and increase social cohesion, such as targeted programs within prisons, community-based programs, juvenile justice measures, and victim services funds. A small portion of

¹¹ “Louisiana’s Justice Reinvestment Reforms 2019 Annual Performance Report” available at <https://gov.louisiana.gov/assets/docs/CJR/2019-JRI-Performance-Annual-Report-Final.pdf> (last accessed Dec 23 2020).

the savings would be redirected into the state's general fund. This initiative would both decrease short-term costs through facility and personnel reductions while decreasing long-term costs associated with higher incarceration and recidivism rates. In Louisiana, the Justice Reinvestment Model redirects 70% of all savings back into restorative justice, reentry programs, juvenile justice, and victims' services.¹² An investment of this size would be transformational to the criminal justice landscape in Connecticut.

2. That the state of Connecticut invest further in reentry programs, restorative justice measures, and resocialization programs. As the state continues to turn away from the logic of mass incarceration, it will need new and vigorous programs to make communities whole. Interventions that center education, housing, employment, behavioral therapy, and treatment for substance abuse are far more likely to reduce crime and respect the key tenets of international human rights norms. Connecticut is well positioned to make these investments. The state may expand pre-existing programs—such as the TRUE program—or it may bring old programs to new cities—by, for example, expanding improved reentry services into New Haven. The state may also choose to invest in completely new initiatives. Restorative justice programs and well-structured transitional residence centers ('halfway houses') would provide new alternatives to incarceration in the state.

¹² Ibid.

3. That the state of Connecticut work to ensure that prison conditions are more humane for those who remain incarcerated, adopting policies and practices consistent with international human rights standards. Around the world, prisons deprive people of liberty without depriving them further of health, education, or dignity. In the United States, those with substance abuse disorders frequently go without substitution treatment. Many are deprived of an accessible education. Others lose social ties as they must pay for phone calls, have reduced visitation rights, or lose access to personal belongings. The UN Special Rapporteur for Torture has recently stated that Connecticut's use of solitary confinement and other restraint mechanisms "may well amount of torture."¹³ Such conditions violate the international standards and human rights norms explicated in this report. Connecticut should work to bring drug therapy, behavioral counseling, educational opportunities including vocational training, and increased socialization into its prisons. Moreover, the state should immediately halt the use of any measures that constitute physical or psychological torture, including but not limited to the use of solitary confinement. Finally, as long as COVID-19 remains a threat

¹³ "Connecticut prison warning: Prolonged solitary confinement may 'amount to torture', UN expert warns," *UN News*, Feb 28 2020, accessible at <https://news.un.org/en/story/2020/02/1058311> (last accessed Dec 30 2020). See also Kelan Lyons, "CT's use of solitary confinement could amount to torture, UN says," *CT Mirror*, Feb 28 2020, accessible at <https://ctmirror.org/2020/02/28/cts-use-of-solitary-confinement-could-amount-to-torture-un-says/>; see UN statement, "United States: prolonged solitary confinement amounts to psychological torture, says UN expert," (Feb. 20, 2020) (noting observations of Special Rapporteur Nils Melzer that, "Most recently, the practices of the Connecticut Department of Correction (the DOC) have been brought to my attention. The DOC appears to routinely resort to repressive measures, such as prolonged or indefinite isolation, excessive use of in-cell restraints and needlessly intrusive strip searches," the expert said. "There seems to be a State-sanctioned policy aimed at purposefully inflicting severe pain or suffering, physical or mental, which may well amount to torture.") available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25633&LangID=E>, last visited January 12, 2021.

in the United States, the Connecticut Department of Correction should take extraordinary steps to maintain the health of the incarcerated population for which it is responsible. The state should maintain social distancing and hygiene guidelines, regularly provide clean PPE to those incarcerated and those who work in detention centers, and work to ensure all are vaccinated promptly, consistent with their higher risk.

4. That the state of Connecticut work to redirect people out of the prison pipeline. During the COVID-19 pandemic, the state has used supervised and early release programs to decrease significantly its prison population. Through analysis of newly available prosecutorial data, the state can better understand when criminal charges are brought, and when those charges result in imprisonment. As case studies in this report have demonstrated, imprisonment is not the natural, correct, or inevitable result of violations of criminal law. Restorative justice programs, community service, supervised release, individualized financial penalties, and other forms of social restitution are effective at reducing crime while keeping offenders out of the dangerous and expensive prison system.
5. Finally, that the state establish an independent community oversight board to facilitate its justice reinvestment initiatives while bridging the gap between the public (especially

those directly affected by the criminal justice system) and policymakers. Communities most affected by criminal justice policies must have a significant say in determining exactly where justice reinvestments are ultimately made. Especially over the last six months, those directly affected by policing and the criminal justice system have worked to ensure that community voices are reflected in the policy that affect their lives. Many of the most significant reforms in Connecticut — from the 2004 original justice investment to the 2019 prosecutorial transparency bill — have originated and been developed in concert with community advocates. As Connecticut works to develop new, humane, and evidence-driven policy for the next decade, it must provide a seat at the table for a diverse coalition of stakeholders from around the state. As communities directly affected by state policies rightly insist, “nothing about us without us.”

III. Decarceration during COVID-19: Trends in the Northeast in 2020

This section outlines 2020's trends in incarceration rates with a focus on Connecticut and the Northeast region.¹⁴ Our review of data collected for the 2020 calendar year demonstrates that COVID-19 has accelerated decreases in incarceration. At the same time, COVID-19 has created budgetary shortfalls in states across the country, including Connecticut. As such, state lawmakers should prepare policy recognizing that, as the pandemic subsides, serious crime and the incarcerated population will be at their lowest level in over a decade.

A. COVID-19 and the Finances of the State Prison System

Due to the spread of COVID-19 in the United States, and as noted above Connecticut is facing a budget crisis. In September 2020, the Connecticut Office of Policy Management projected a deficit for the upcoming year totaling over two billion dollars (\$2,024,900,000 USD).¹⁵ Shortly thereafter, the Office of Fiscal Analysis projected that, over the next two years, this deficit will get worse: Connecticut is expected to be 4.3 billion dollars in the red by the end of Fiscal Year 2023. Prisons cost the state of Connecticut approximately \$1.15 billion USD in the 2020-2021 fiscal year.¹⁶ This cost is consistent with the general upturn in the Connecticut Department of

¹⁴ In this paper, we consider the Northeast region to include the following states, data from which are analyzed below: Pennsylvania, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, New Hampshire, Vermont and Maine. This follows the definition used in the FBI's UCR reports.

¹⁵ Letter to the Comptroller, Sept. 20, 2020, Office of Policy and Management, available at https://portal.ct.gov/-/media/OPM/Budget/ComptrollerLetter/FY2021/FY_2021_SEP_21_2020_Comptroller_Letter.pdf

¹⁶ This figure (1.15 billion) reflects both direct costs (.65 billion) and employment fringe costs (.49 billion). The DOC budget for 2020-2021 was approximately .65 billion. Most state agency fringes (including DOC) are accounted for in the Comptroller's budget, not the agency's own budget. The FY21 employment costs for DOC was approximately

Correction general fund expenditures.¹⁷ As the effects of COVID-19 devastate state economies, turning away from excessive correctional spending becomes essential financially, as well as good policy.¹⁸ In particular, divestment from the prison system and reinvestment in the reentry, restorative justice, and resocialization programs explored in this report could provide Connecticut with significant short-term savings by reducing hard costs associated with prisons and long-term savings associated with reduced crime, less frequent prosecution, higher rates of employment, and decreased rates of substance abuse.

B. Reductions in Incarceration during 2020: a continued trend

Connecticut's incarcerated population has been steadily decreasing since its peak in the early 2000s (see Section V of this report for a review of Connecticut's historical trends). This trend has greatly accelerated since the beginning of the COVID-19 pandemic. Both Connecticut's jails and prisons have seen very significant reductions in their numbers since January (Figures 1–3). At the beginning of January, Connecticut DOC prisons housed 12,284 people. By December 1, 2020, this number had fallen to 9,237, representing a 24.8% decrease in a single year. Those

.413 billion. Fringe rates for hazardous duty SERS employees (including DOC employees) is roughly 122.12% of their annual salary: $1.22 * .413 = .5$ billion. See DOC Budget, available at

https://www.cga.ct.gov/ofa/Documents/year/agbs/2020AGBS-20191002_Correction,%20Department%20of.pdf

¹⁷ General Fund Expenditures of the Department of Correction: <https://portal.ct.gov/DOC/Report/General-Fund-Expenditures-Statistics> (last accessed Dec 23 2020).

¹⁸ The impacts of COVID-19 are not only financial. The virus disproportionately has disproportionately affected incarcerated populations. A November 2020 report by the LBJ School of Public Affairs at the University of Texas on COVID-19 infections in Texas prisons found that incarcerated individuals are uniquely impacted by COVID-19. That study noted that at one point 44 out of 50 of the country's top clusters for the virus were in prisons. Michele Deitch, Alycia Welch, William Bucknall, and Destiny Moreno, *COVID and Corrections: A Profile of COVID Deaths in Custody in Texas*, Lyndon B. Johnson School of Public Affairs, November 2020, p. 5.

serving sentences of less than one year saw the greatest decrease. On January 1, 2020, there were 908 people serving such misdemeanor sentences in Connecticut prisons. By December 1, 2020, this number had fallen nearly 79% to just 192. The misdemeanor population saw its greatest decreases in April, May, and June, shortly after the beginning of the COVID-19 pandemic in the United States. The number of those detained in pretrial detention, by contrast, has not changed significantly in 2020 – falling just 3.4%. This does not, however, mean that arrests are level or up in 2020. As COVID has delayed criminal trials in Connecticut, it is plausible those arrested are being detained pretrial for longer periods of time.¹⁹

As illustrated in Section V in this report, crime levels remain low in Connecticut, and prison and jail populations have been decreasing over the last decade. As such, the reductions in prison and jail populations seen since the beginning of COVID-19 should not be seen as anomalous. Instead, the more reasonable explanation is that COVID-19 has simply accelerated longer-term trends toward a reduction in incarceration at the local and state level in Connecticut.

¹⁹ Dave Collins, “Jury duty? No thanks, say many, forcing trials to be delayed,” Nov 22, 2020, Associated Press *via* Hartford Courant, available at <https://www.courant.com/coronavirus/ct-nw-coronavirus-jury-duty-20201122-db7cpwxemnd3tgmrayygbgjfem-story.html>; Jessica Roth, “The Constitution is on Pause in America’s Courtrooms,” Oct 10 2020, available at <https://www.theatlantic.com/ideas/archive/2020/10/constitution-pause-americas-courtrooms/616633/>; Christine Stuart, “Court Backlog Builds During Ongoing COVID-19 Pandemic,” Sept 16, 2020, NBC CT, available at <https://www.nbcconnecticut.com/news/coronavirus/court-backlog-builds-during-ongoing-covid-19-pandemic/2333462/>;

Figure 1: Monthly Change in CT Prison Population (Sentenced + Unsentenced), 2020²⁰

Month	Jan.	Feb.	Mar.	Apr.	May	Jun.	July	Aug.	Sept.	Oct.	Nov.	Dec.
Population ²¹	12284	12385	12409	11853	10973	10444	9945	9645	9545	9378	9350	9237
Percent Change from Previous Month	***	0.82%	0.19%	4.48%	-7.42%	4.82%	4.78%	-3.02%	-1.04%	-1.75%	-0.30%	-1.21%

Figure 2: Monthly Change in CT Prison Population (Sentenced only), 2020²²

Month	Jan.	Feb.	Mar.	Apr.	May	Jun.	July	Aug.	Sept.	Oct.	Nov.	Dec.
Population ²³	8891	9046	9036	8596	7962	7348	6873	6662	6537	6311	6146	5999
Percent Change from Previous Month	***	1.7%	-0.1%	-4.9%	-7.4%	-7.7%	-6.5%	-3.1%	-1.9%	-3.5%	-2.6%	-2.4%

Figure 3: Monthly Change in CT Jail / Misdemeanor Population, 2020²⁴

Month	Jan.	Feb.	Mar.	Apr.	May	Jun.	July	Aug.	Sept.	Oct.	Nov.	Dec.
Population ²⁵	908	991	973	785	503	331	247	225	206	197	206	192
Percent Change from Previous Month	***	9.1%	-1.8%	19.3%	-35.9%	-34.2%	-25.4%	-8.9%	-8.4%	-4.4%	4.6%	-6.8%

²⁰Connecticut Correctional Facility Population Counts, available at [https://cjis-dashboard.ct.gov/CJPPD_REPORTS/rdPage.aspx?rdReport=Connecticut Correctional Facility Population Data Export Menu](https://cjis-dashboard.ct.gov/CJPPD_REPORTS/rdPage.aspx?rdReport=Connecticut%20Correctional%20Facility%20Population%20Data%20Export%20Menu) (last accessed Dec 17 2020).

²¹ Population measured on the first day of each calendar month.

²² Connecticut Correctional Facility Population Counts, available at [https://cjis-dashboard.ct.gov/CJPPD_REPORTS/rdPage.aspx?rdReport=Connecticut Correctional Facility Population Data Export Menu](https://cjis-dashboard.ct.gov/CJPPD_REPORTS/rdPage.aspx?rdReport=Connecticut%20Correctional%20Facility%20Population%20Data%20Export%20Menu) (last accessed Dec 17 2020).

²³ Population measured on the first day of each calendar month

²⁴This is the number of individuals serving less than 1 year of time in incarceration. Connecticut Correctional Facility Population Counts, available at [https://cjis-dashboard.ct.gov/CJPPD_REPORTS/rdPage.aspx?rdReport=Connecticut Correctional Facility Population Data Export Menu](https://cjis-dashboard.ct.gov/CJPPD_REPORTS/rdPage.aspx?rdReport=Connecticut%20Correctional%20Facility%20Population%20Data%20Export%20Menu) (last accessed Dec 17 2020).

²⁵ Population measured on the first day of each calendar month

Connecticut's decreasing jail and prison populations over the last year reflect the consistent trend toward decarceration across the entire Northeast region during that same period.

As in Connecticut, across the Northeast, COVID-19 has accelerated the trend toward decarceration.²⁶ Since January 2020, Maine, Michigan, New Hampshire, Pennsylvania, Rhode Island, and Vermont have seen significant decreases in the number of those detained in their prisons. Moreover, the 2020 decrease outpaces any other yearly change within the last decade.²⁷ In the wake of the pandemic, many states have successfully supplanted incarceration with supervised release, clemency, community services, and other restorative programs, such as those for which this report advocates in other sections. These trends suggest that, by the end of the pandemic, Northeastern states should expect that their housed prison populations will be at historic lows.

Note: In the following figures, we consider the number of people housed in state DOC facilities in each jurisdiction — what we call “prison population.” It is important to note that one cannot make valid comparisons between or among states as they are listed in these figures.

²⁶ In this paper, we consider the Northeast region to include the following states, data from which are analyzed below: Pennsylvania, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, New Hampshire, Vermont and Maine. This follows the definition used in the FBI's UCR reports.

²⁷ See Section V of this report for comparison.

Connecticut and Rhode Island have unified jail and prison systems while the other states considered have separate jail and prison systems. Thus, states with unified systems will appear to over-incarcerate relative to their peers; states with dual systems will appear to under-incarcerate relative to their peers. Massachusetts, for example, incarcerates more people than does Connecticut; however, because Connecticut includes those in jails in prison population and Massachusetts does not, it would (incorrectly) appear from the chart below that Connecticut's prison population is higher than its more populous neighbor.

Crucially, this report does not attempt to make comparisons between and among states, their prison populations, or their incarceration rates. Instead, we aim to show that COVID-19 has led to a significant and consistent decrease in the number of people incarcerated across the Northeast Region. That is, the point of interest for this report is the relative decrease in those housed in state facilities, and not the comparison between and among states.

Figures 4-7 show both the monthly prison population and change in prison population for Northeastern states in 2020, where available. Figure 6 compares each state's January 2020 prison population with its most recent monthly figures.

Figure 4a: Monthly Change in Prison Population (dual systems only) for Northeast, 2020^{28,29}

State	Jan.	Feb.	Mar.	Apr.	May	Jun.	July	Aug.	Sept.	Oct.	Nov.	Dec.
ME	2,176	2,161	2,138	2,024	1,922	1,834	1,794	1,785	1,784	1,776	***	***
% change	***	-0.69%	-1.06%	-5.33%	-5.04%	-4.58%	-2.18%	-0.50%	-0.06%	-0.45%	***	***
MA	7,323	7,306	7,368	7,167	6,799	6,628	6,559	6,475	6,413	6,268	6,178	***
% change	***	-0.23%	0.85%	-2.73%	-5.13%	-2.52%	-1.04%	-1.28%	-0.96%	-2.26%	-1.44%	***
NH	2,395	2,403	2,403	2,364	2,290	2,214	2,189	2,161	2,142	2,138	2,120	***
% change	***	0.33%	0.00%	-1.62%	-3.13%	-3.32%	-1.13%	-1.28%	-0.88%	-0.19%	-0.84%	***
NJ	***	***	***	***	***	***	***	14,409	14,018	13,908	13,805	11,916
% change	***	***	***	***	***	***	***	***	-2.71%	-0.78%	-0.74%	-13.68%
NY	43,564	43,137	43,032	42,141	40,579	39,320	38,336	37,421	36,792	36,248	35,650	35,040
% change		-0.98%	-0.24%	-2.07%	-3.71%	-3.10%	-2.50%	-2.39%	-1.68%	-1.48%	-1.65%	-1.71%
PA	45,870	45,863	44,756	44,230	42,868	41,881	41,081	40,677	40,326	39,651	39,284	***
% change	***	-0.02%	-2.41%	-1.18%	-3.08%	-2.30%	-1.91%	-0.98%	-0.86%	-1.67%	-0.93%	***
VT	1,713	1,688	1,639	1,417	1,371	1,384	1,420	1,394	1,415	1,378	1,365	***
% change	***	-1.46%	-2.90%	-13.54%	-3.25%	0.95%	2.60%	-1.83%	1.51%	-2.61%	-0.94%	***

²⁸ Direct comparisons between unified and separate systems are not valid. See pp. 19 for a longer explanation.

²⁹ ME: Average monthly population of incarcerated people under Maine DoC supervision.

<https://www.maine.gov/corrections/sites/maine.gov.corrections/files/inline-files/Oct%202020%20Monthly%20Adult%20Data.pdf>

MA: Weekly count of population in DOC custody in the first week of each month.

<https://www.mass.gov/lists/weekly-inmate-count-2020>

NH: Count of in-jurisdiction population in DOC custody on first day of each month.

<https://www.nh.gov/nhdoc/documents/population-summary.pdf>

NJ: Obtained via public records request.

NY: Obtained via public records request.

PA: Population in state DOC custody on the last day of the previous month.

<https://www.cor.pa.gov/About%20Us/Statistics/Pages/Monthly-Population-Reports.aspx>

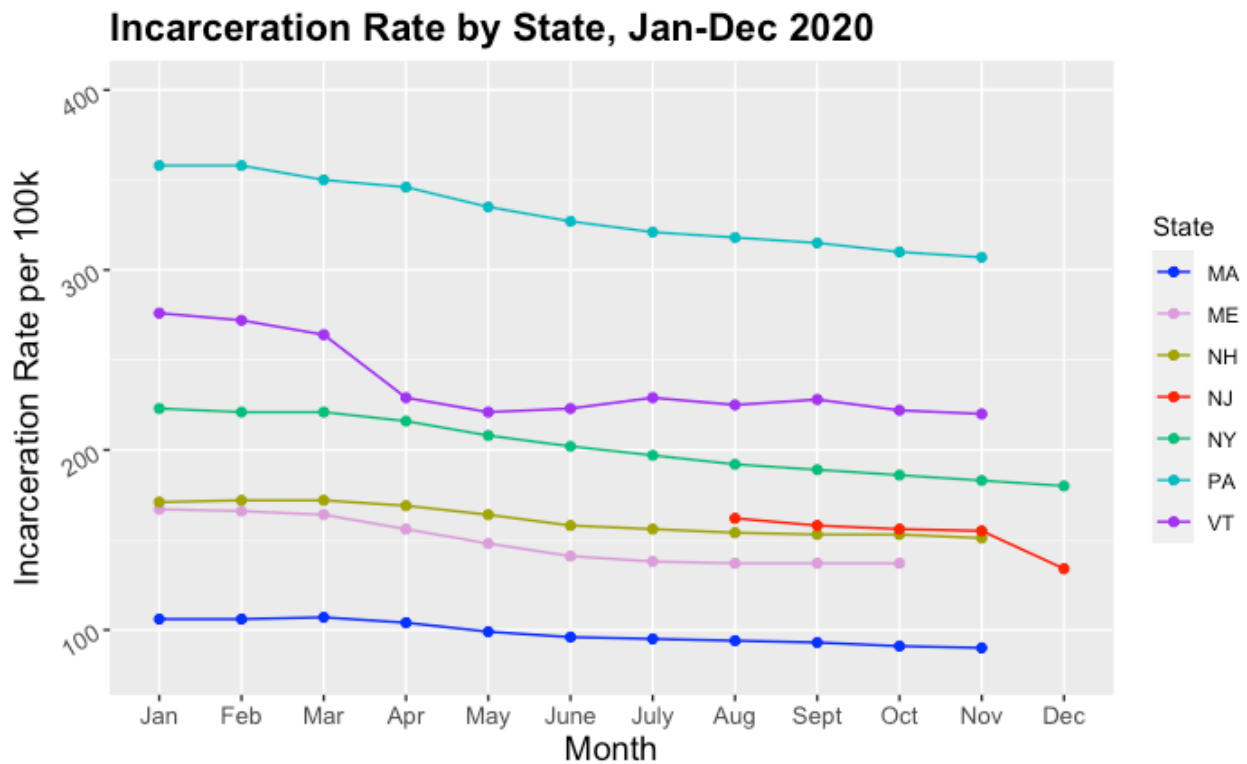
VT: Jan. and February: Population under VT DoC custody on first day of month. Obtained via public records request. Mar.-Dec.: Population under VT DoC custody on 13th day of month.

https://doc.vermont.gov/sites/correct/files/documents/Daily-Population/Pop_Count_11-13-2020.pdf

Figure 4b: Monthly Change in Prison and Jail Population (unified systems only) for Northeast, 2020³⁰

State	Jan.	Feb.	Mar.	Apr.	May	Jun.	July	Aug.	Sept.	Oct.	Nov.	Dec.
CT	12,284	12,385	12,409	11,853	10,973	10,444	9,945	9,645	9,545	9,378	9,350	9,237
% change	***	0.82%	0.19%	-4.48%	-7.42%	-4.82%	-4.78%	-3.02%	-1.04%	-1.75%	-0.30%	-1.21%
RI	2,601	2,665	2,592	2,304	2,224	2,197	2,170	2,193	2,194	2,207	2,204	2,153
% change	***	2.46%	-2.74%	-11.11%	-3.47%	-1.21%	-1.23%	1.06%	0.05%	0.59%	-0.14%	-2.31%

Figure 5a: Monthly Change in Incarceration Rate (Prisons only; dual systems), Jan. – Dec. 2020³¹



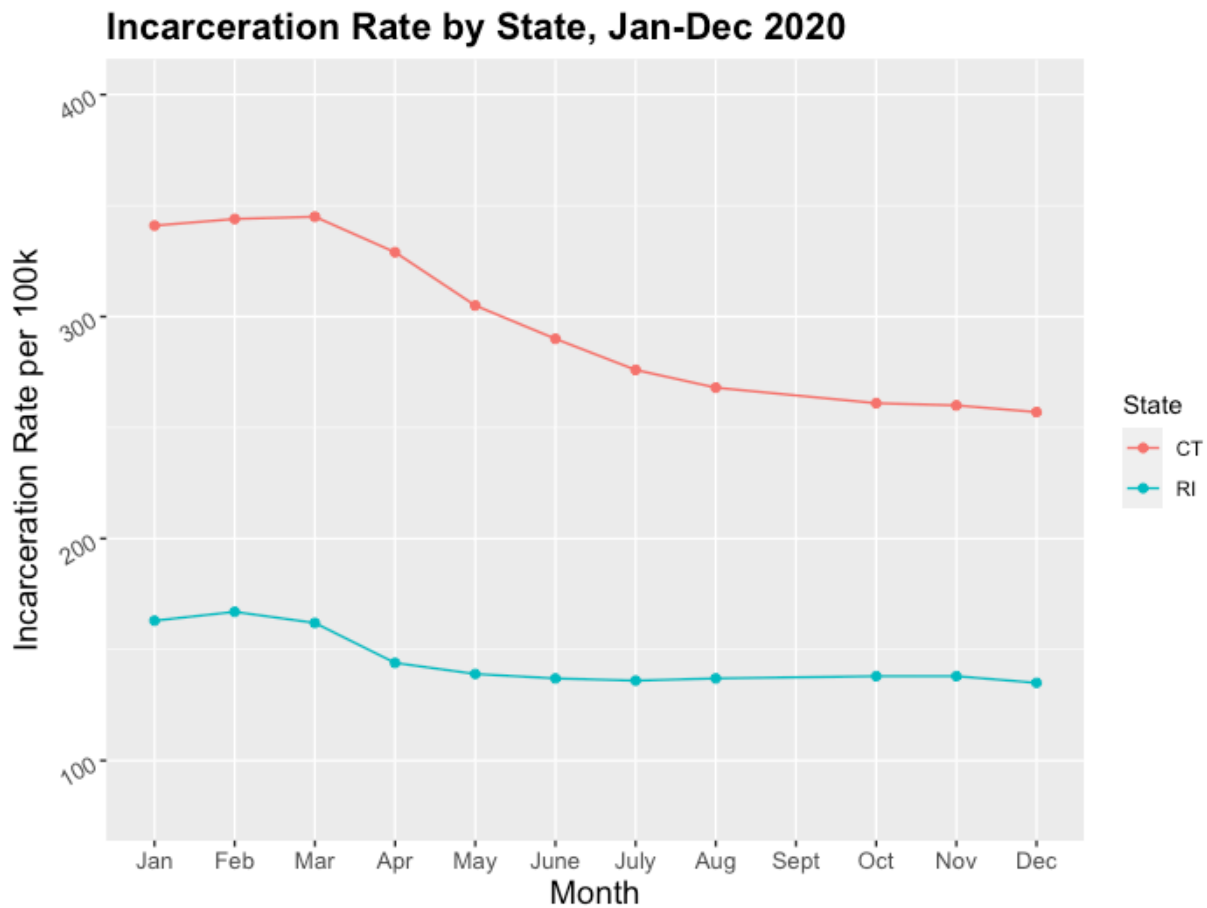
³⁰ CT: Count of total population under DoC custody on first day of month.

[https://cjis-dashboard.ct.gov/CJPPD_REPORTS/rdPage.aspx?rdReport=Connecticut Correctional Facility Population Data Export Menu](https://cjis-dashboard.ct.gov/CJPPD_REPORTS/rdPage.aspx?rdReport=Connecticut_Correctional_Facility_Population_Data_Export_Menu) RI: Average monthly population in RI DOC custody.

<http://www.doc.ri.gov/docs/FY19-20%20Cap%20&%20Midnight%20Count.pdf>

³¹ This figure only depicts prison population. Rates calculated using (# incarcerated / Census pop. estimates). CT and RI are omitted from this figure because they run unified prison systems. See pp. 19 for a longer explanation.

Figure 5b: Monthly Change in Incarceration Rate (jails and prisons; unified systems), Jan. – Dec. 2020³²



As the above figures demonstrate, every state in the Northeast has seen significant reductions during 2020. In fact, since the beginning of the pandemic, Vermont is the only state with a documented monthly increase in prison population, but even these increases were offset by later reductions. While the calendar year had not concluded at the time of that this paper was

³² This figure only depicts prison and jail population. Rates calculated using (# incarcerated / Census pop. estimates).

finalized, the data suggest that the 2020-2021 decrease will be unprecedented. Figure 6 shows the prison population in each state pre- and post-COVID. All states for which data are available witnessed reductions of at least 10%, while many states saw reductions closer to 15% or 20%.

Figure 6a: Total state reduction in Prison Population during COVID-19 (dual systems)³³

State	State Date	Population	End Date	Population	Percent Change
ME	Jan 2020	2,176	Oct 2020	1,776	-18.4%
MA	Jan 2020	7,323	Nov 2020	6,178	-15.6%
NH	Jan 2020	2,395	Nov 2020	2,120	-11.5%
NY	Jan 2020	43,564	Dec 2020	35,040	-19.6%
PA	Jan 2020	45,870	Nov 2020	39,284	-14.4%
VT	Jan 2020	1,713	Nov 2020	1,365	-20.3%

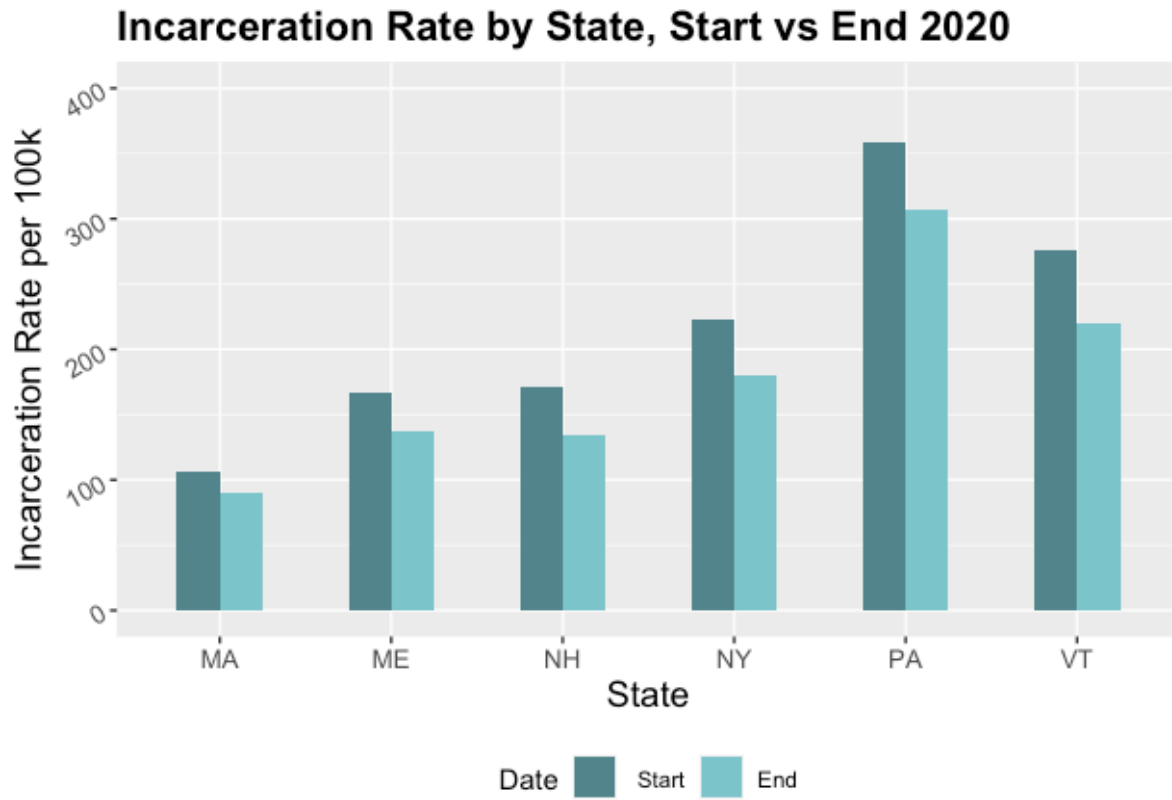
Figure 6b: Total state reduction in Jail and Prison Population during COVID-19 (unified systems)³⁴

State	State Date	Population	End Date	Population	Percent Change
CT	Jan 2020	12,284	Dec 2020	9,237	-24.8%
RI	Jan 2020	2,601	Dec 2020	2,153	-17.2%

³³ Data is the same as in Figure 4.

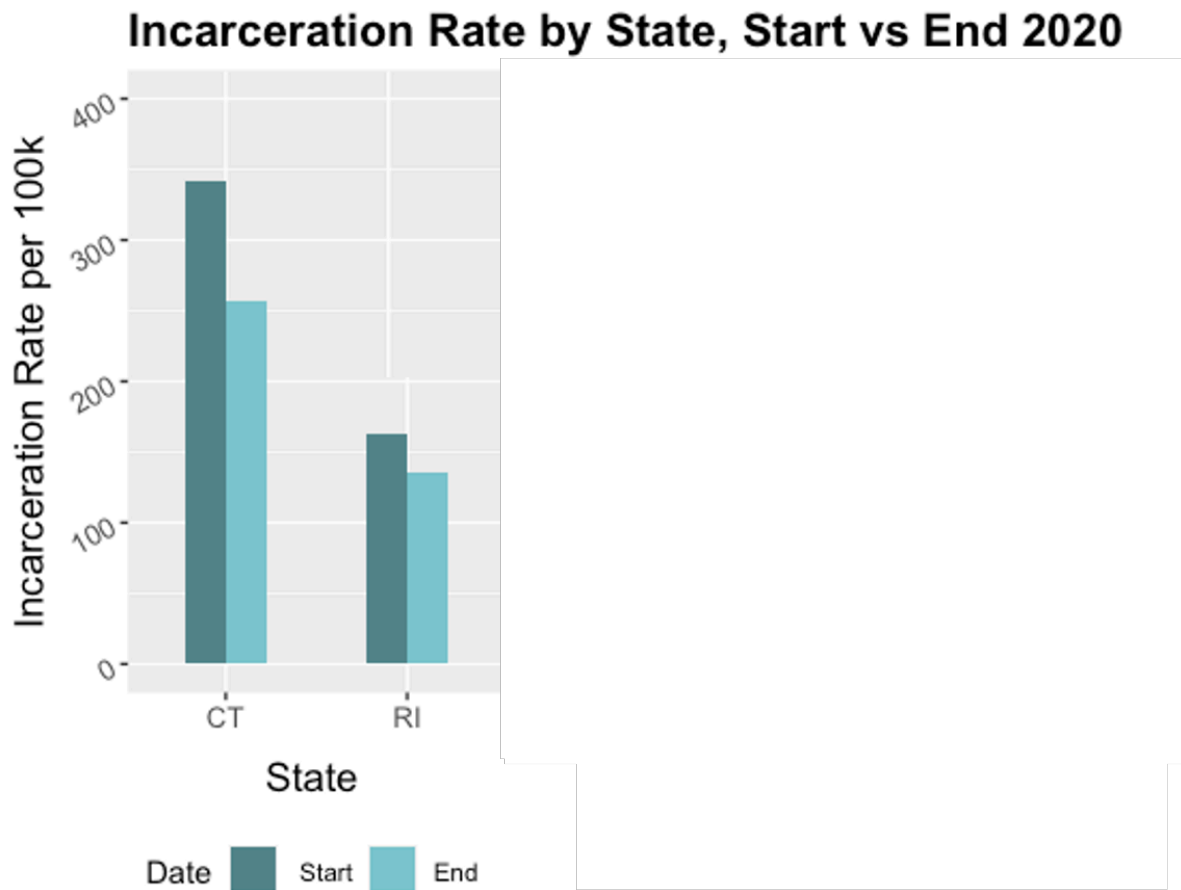
³⁴ Data is the same as in Figure 4.

Figure 7a: Reduction in Incarceration Rate (Prisons only; dual systems), Start vs. End of 2020³⁵



³⁵ Data same as in Figure 4.

Figure 7b: Reduction in Incarceration Rate (Jail and Prisons; unified systems), Start vs. End of 2020³⁶



Thus, while Connecticut has seen a drastic reduction in its prison population since the beginning of 2020, this decrease is by no means anomalous. Instead, decarceration in Connecticut is consistent with the regional trend.

³⁶ Data same as in Figure 4.

As the data in this and subsequent sections show, both crime and prison population have fallen significantly between the beginning of 2011 and the beginning of 2020. Moreover, COVID-19 has accelerated these trends, bringing down the number of those incarcerated in the Northeast to levels not seen since the before 2000.³⁷ State leaders and policymakers should keep these trends in mind when crafting their state’s post-COVID public security policies. If current trends continue, by mid-to-late 2021, Connecticut’s prisons will house fewer than half of those incarcerated a decade earlier. This reduction in levels of incarceration presents the state with a unique opportunity to reduce expensive correctional expenses, permitting it to redirect savings into crime prevention and reentry programs.

³⁷ See “Incarceration Trends in Connecticut,” *The Vera Institute for Justice*, Dec 2019, available at <https://www.vera.org/downloads/pdfdownloads/state-incarceration-trends-connecticut.pdf>

IV. International Standards and Best Practices

A review of international standards on detention, as well as comparative analysis of successful practices in other countries support the current turn away from mass incarceration and towards models that focus on rehabilitation and restorative justice, rather than punitive measures. Two principles guide international standards for state treatment of those in conflict with the law. First is the idea that the individual's right to circulate freely should be restricted only when clearly justified and then, only to the extent strictly necessary. In concrete terms this means that detention in closed settings if applied at all, must be used sparingly, only as a last resort. This is particularly the case for pre-trial detention, which violates the presumption of innocence, a foundational principle of both US and international standards in the criminal justice system. Prison is costly, violates the rights of those incarcerated and produces undesired consequences and thus must be used rarely. Second is the idea that carceral responses to criminal transgressions should not involve unnecessary restrictions on rights, should be designed to rehabilitate those in conflict with the law and should facilitate their reintegration into society. While punishment and deterrence may be legitimate societal goals, they must never be the lone or central purposes of criminal justice policies. Rehabilitation and reintegration must be the primary goals of any rights-respecting criminal justice system. A third principle, not specific to the context of detention, underscores the importance of participation in policy development by those directly affected. Participation by stakeholders has increasingly

been recognized as a core element of the legitimacy—from the perspective of human rights—of any state policies with significant impact of lives and livelihoods.

A. Alternatives to Imprisonment: Guidelines from the United Nations

The United Nations has adopted principles to guide states in the development of policies in the criminal justice sector, with emphasis on alternatives to prison. Maintaining large numbers in closed detention centers leads to rights violations, is costly and is rarely efficient. In 1990, the United Nations drafted the Standard Minimum Rules for Non-Custodial Measures to assist states in developing non-carceral alternatives for those in conflict with the law. As we will see below, these Rules followed the issuance over three decades earlier of the UN Standard Minimum Rules on Conditions of Detention. The 1990 Rules, drafted in Tokyo, are named for that city. They urge states to avoid the use of prisons, focusing on the humanity and rights of those who might be detained, as well as the better uses that might be made of resources directed to prisons. With regard to the first concern, the Rules state that:

Member States shall develop non-custodial measures within their legal systems to provide other options, thus reducing the use of imprisonment, and to rationalize criminal justice policies, taking into account the observance of human rights, the requirements of social justice and the rehabilitation needs of the offender.³⁸

³⁸ *Compendium of United Nations standards and norms in crime prevention and criminal justice III.12: The Tokyo Rules*, UNODC, p.117 at para 1.5
https://www.unodc.org/pdf/criminal_justice/Compendium_UN_Standards_and_Norms_CP_and_CJ_English.pdf

With regard to costs and investments in the criminal justice sector, the Rules urge states to avoid incarceration. They urge nations that:

The use of prison should be strictly limited to being a measure of last resort. Prisons represent a waste of scarce resources and human potential. The majority of prisoners who occupy them pose no actual threat to society.³⁹

The United Nations has gone well beyond merely calling for states to develop alternatives to prison. Its Office on Drugs and Crime (UNODC) works to guide states to reform their criminal justice systems. One example of this ongoing effort is the UNODC handbook on alternatives to prison.⁴⁰ The handbook examines dozens of programs from around the world, assessing their efficacy and providing guidance to authorities seeking to reduce the use of incarceration. While states are encouraged to reduce the use of prison post-conviction, international standards *require* that pre-trial detention be used only in the most exceptional circumstances. This is the case across all international bodies--whether universal (United Nations) or regional (European, inter-American or African).

³⁹ *Compendium of United Nations standards and norms in crime prevention and criminal justice III.13: The Kadoma Declaration on Community Service*, (1997), p. 88, para 1. Available at: <https://www.unodc.org/documents/justice-and-prison-reform/E-Ebook.pdf>, last visited December 30, 2020.

⁴⁰ United Nations Office on Drugs and Crime, Handbook of basic principles and promising practices on Alternatives to Imprisonment, UNODC, https://www.unodc.org/pdf/criminal_justice/Handbook_of_Basic_Principles_and_Promising_Practices_on_Alternatives_to_Imprisonment.pdf

B. Conditions of Detention

In addition to standards on alternatives to prison, the United Nations has also developed rules to guide states in the development and maintenance of rights-respecting closed detention centers. In 1955, the UN issued the Standard Minimum Rules for the Treatment of Prisoners, ratified by the Economic and Social Council two years later in 1957. The UN Standard Minimum Rules have been “the universally acknowledged minimum standards for the detention of prisoners.”⁴¹

Nearly sixty years later, in 2015, the United Nations issued an updated set of guidelines, known as the Nelson Mandela Rules.⁴² The Mandela Rules provide relatively detailed standards for a range of conditions in detention centers. These include prisoner file management (and confidentiality); separation of categories of prisoners; the size and physical requirements for places of detention, sanitary conditions of areas of accommodation; physical hygiene; clothing and bedding; food; exercise and sport; health-care services; standards and guidelines for restrictions, discipline and sanctions; searches of prisoners and cells; procedures for receiving and processing complaints by prisoners; contact with the outside world; reading materials; religious instruction and guarantees; retention of prisoners’ property; investigations of alleged misconduct; selection, training, and oversight of institutional personnel; external inspections of

⁴¹ Resolution adopted by the General Assembly on 17 December 2015 [on the report of the Third Committee (A/70/490)] 70/175. United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) (Preamble).

⁴² Resolution adopted by the General Assembly on 17 December 2015 [on the report of the Third Committee (A/70/490)] 70/175. United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).

detention centers; particular treatment of special categories (those sentenced as opposed to those in pre-trial detention); classification and individualization of prisoners; privileges; work; education and recreation; social relations and aftercare; and particular standards for prisoners with mental health issues. In all, the Mandela standards include 122 detailed rules.

The first article and guiding principle of the Mandela Rules requires that, “All prisoners shall be treated with the respect due to their inherent dignity and value as human beings.”⁴³ Rule 4 explains the purposes of detention—protection of society, on the one hand, but also, centrally, the rehabilitation and reduced recidivism. That article states in its first part:

The purposes of a sentence of imprisonment or similar measures deprivative of a person’s liberty are primarily to protect society against crime and to reduce recidivism. Those purposes can be achieved only if the period of imprisonment is used to ensure, so far as possible, the reintegration of such persons into society upon release so that they can lead a law-abiding and self-supporting life.⁴⁴

Rule 4 continues, explaining the means of achieving the first goal requires that detention centers be guided by restorative values. Thus, the article explains:

To this end, prison administrations and other competent authorities should offer education, vocational training and work, as well as other forms of assistance that are appropriate and available, including those of a remedial, moral, spiritual, social and

⁴³ Resolution adopted by the General Assembly on 17 December 2015 [on the report of the Third Committee (A/70/490)] 70/175. United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).

⁴⁴ Resolution adopted by the General Assembly on 17 December 2015 [on the report of the Third Committee (A/70/490)] 70/175. United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).

health- and sports-based nature. All such programmes, activities and services should be delivered in line with the individual treatment needs of prisoners.⁴⁵

The Mandela Rules build not only on the 1957 Standard Minimum Rules for the Treatment of Prisoners, but also decades of jurisprudence of United Nations bodies, as well as regional human rights bodies and courts, that is, the European, Inter-American and African Courts of Human Rights, as well as the Inter-American Commission, the now-defunct European Commission, and the African Commission on Human (and Peoples' Rights).

In December 2010, the UN General Assembly adopted the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (known as the Bangkok Rules). These Rules, which complement, rather than replace the existing United Nations Standard Minimum Rules in this area, provide a detailed set of standards to guide the treatment of women in criminal justice systems globally. They include provisions on a broad range of issues, including: admission; personal hygiene; gender-specific health care-services; including medical screening on entry; mental health HIV prevention and care; substance abuse; suicide prevention and limits on instruments of restraint (for pregnant women); personnel and their training; pregnancy and child care; treatment of foreign nationals and national minorities; special rules for pre-trial detainees; and non-custodial measures (which should be strengthened and prioritized, in light of the caretaking responsibilities frequently left to women).

⁴⁵ Resolution adopted by the General Assembly on 17 December 2015 [on the report of the Third Committee (A/70/490)] 70/175. United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).

The two principles noted above—that detention should be a last resort and that incarceration should involve no more restriction on rights than necessary and be guided by the goal of rehabilitation and reintegration—are the main themes that animate regional international standards in the field of criminal justice. Thus, one finds similar language in the decisions and reports issued in the Inter-American, European and African human rights systems.

The European Human Rights System: Focus on Conditions of Detention

The European human rights system has had occasion to address prison conditions in dozens of sentences issued over the past half-century. A thorough analysis of the dense jurisprudence of the European Court of Human Rights (ECtHR) is beyond the scope of this paper. What is evident in that jurisprudence for our purposes are the essential guarantees that all states party to the European Convention on Human Rights must respect in their criminal justice systems. As in the universal (United Nations) system, the ECtHR rulings apply the principles that incarceration must be a last resort and that conditions of detention must meet minimum standards.

The ECtHR has repeatedly found that unsanitary conditions, insufficient privacy and space and other poor hygienic or infrastructure deficiencies constitute violations of the European Convention on Human Rights. The Court has held that there need be no intent to deprive the detainee to constitute a violation—objective, substandard conditions suffice to violate

international standards. Typical in the regard is the case of *Vasilescu v. Belgium* from 2014. The official summary of the Court's ruling states: ⁴⁶

The Court...noted in particular that in addition to the problem of prison overcrowding, the applicant's allegations regarding the sanitary conditions, particularly access to running water and the toilets, were most plausible and reflected the realities described by the European Committee for the Prevention of Torture (CPT) in the various reports drawn up following its visits to Belgian prisons. While there was nothing to indicate that there had been a real intention to humiliate or debase the applicant during his detention, the Court found that his physical conditions of detention in Antwerp and Merksplas Prisons had subjected him to hardship exceeding the unavoidable level of suffering inherent in detention and amounted to inhuman and degrading treatment. ⁴⁷

Review of the scores of decisions on prisons conditions allows for a thicker understanding of what must be provided in terms of space, privacy, programming and treatment. Through its interpretation of the prohibition on torture and cruel treatment, the European Court has guaranteed to detainees the right to decent conditions and health services. That right, similar in content to the US Constitutional guarantee in the Eighth Amendment prohibiting cruel and unusual punishment,⁴⁸ states, succinctly that "No one shall be subjected to torture or to inhuman or degrading treatment or punishment." As Prof. Angus Wallace has concluded,

Under Article 3, the European Court of Human Rights has recognised that because people in prison are almost totally dependent on the authorities, states are under a general obligation to protect their physical wellbeing. From this general obligation, the European Court of Human

⁴⁶ For a summary of decisions on violations of rights protecting dignified conditions of detention in the European system, see European Court of Human Rights, Factsheet-Detention conditions and treatment of prisoners, Oct. 2020, available at https://www.echr.coe.int/documents/fs_detention_conditions_eng.pdf, (last visited Dec. 23, 2020)

⁴⁷ European Court of Human Rights, Factsheet-Detention conditions and treatment of prisoners, Oct. 2020, available at https://www.echr.coe.int/documents/fs_detention_conditions_eng.pdf, p. 3. (last visited Dec. 23, 2020)

⁴⁸ See Eighth Amendment to the United States Constitution, which reads, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

Rights has defined a number of specific positive obligations with respect to people in prison. These positive obligations include the duty to provide equivalent health services and timely, requisite medical assistance; to comply with very stringent limitations on the use of force feeding; to provide a general right to hygienic living conditions, including access to proper toilet or washing facilities, clean and adequate bedding and clothing, and access to reasonable quality food and water in sufficient amounts.⁴⁹

The main principle derived from the body of ECtHR caselaw is that those in detention retain their human rights—to health, to education, to decent accommodations, physical integrity, and so forth—limited only to the extent necessary by the restrictions imposed in accordance with valid laws and judgments.

Inter-American Human Rights System: Focus on Limiting Pre-Trial Detention

Much like its European counterpart, the Inter-American system has had ample opportunity to consider conditions of detention and has focused on the principles that incarceration must be a last resort and that conditions in detention centers must meet minimum standards. The inter-American system, unlike the European system, still retains both a Court (the Inter-American Court of Human Rights) and a Commission (the Inter-American Commission on Human Rights). This latter body regularly issues statements on policy and practices in the Western hemisphere, based on visits to States in the Americas, including the United States. The Inter-American

⁴⁹ Angus EM Wallace, “The European Court of Human Rights: a tool for improving prison health,” *The Lancet*, February 2020, available at [https://www.thelancet.com/journals/lanpub/article/PIIS2468-2667\(19\)30258-0/fulltext](https://www.thelancet.com/journals/lanpub/article/PIIS2468-2667(19)30258-0/fulltext)

Commission, through its Rapporteurship on the Rights of Persons Deprived of Liberty, regularly comments on issues relating to detention, informed not only by the norms of the inter-American system, but also by its regular, on-site assessment of conditions in hundreds of jails, prisons and penitentiaries in the Western hemisphere. The Commission has issued many substantial reports that provide detailed guidelines for authorities in all phases of the criminal justice system.

With regard to the conditions of detention, the Inter-American Court has expressly referenced the United Nations Standard Minimum Rules into its own jurisprudence, effectively incorporating those standards into the inter-American system. In doing so, the Inter-American system has, in effect, applied the full range of guarantees provided in the UN standards to states in the Americas. Both the Commission and the Court have had numerous occasions in individual cases, as well as in reports, to assess the deficiencies of state practice in detention centers, weighing these against the UN standards and their analogues in the Americas.

While the bodies of the Inter-American system have encouraged states to reduce the use of prisons and take aggressive measures to limit overcrowding in detention centers, the system has paid particular attention to the need to drastically reduce pre-trial detention. It should be noted that the Inter-American Commission has expressly cited the Tokyo Rules on alternative measures to prison, thus ratifying their application in the Americas.⁵⁰ In a detailed report

⁵⁰ The Commission has noted that, “The United Nations Tokyo Rules stipulate that in order to guarantee the effective use of these measures States should put in place a wide array of options so that the adequate measure

issued in 2017,⁵¹ the Inter-American Commission reconsidered its 2013 report on pre-trial detention,⁵² assessing the law and practice in the Americas. The 2017 publication urged states to limit pre-trial detention to instances in which evidence demonstrates the likelihood of flight (to avoid facing trial) or obstruction of justice (such as destruction of evidence). Pre-trial detention in circumstances other than these is contrary to human rights principles in the Americas.

The Inter-American Commission report also expressly incorporates a gender perspective, urging all those in the criminal justice system to consider the consequences of detention of women—who are disproportionately the caretakers of children (and older adults)—on the rights and wellbeing of those in need of care. Thus, the Inter-American Commission has emphasized that “[t]he judicial authority should opt to apply the least cumbersome measure, always considering a gender perspective or, as the case may be, the paramount interest of the child or the impairment that could be caused to other persons belonging to groups at special risk.”⁵³

can be determined, considering the particularities of each case.” Inter-American Commission on Human Rights, Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas, OEA/Ser.:L./V/II.163 Doc. 105 (3 July 2017) (Original Spanish), available in English at <http://www.oas.org/en/iachr/reports/pdfs/pretrialdetention.pdf> at para. 108.

⁵¹ Inter-American Commission on Human Rights, Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas, OEA/Ser.:L./V/II.163 Doc. 105 (3 July 2017) (Original Spanish), available in English at <http://www.oas.org/en/iachr/reports/pdfs/pretrialdetention.pdf>

⁵² Inter-American Commission on Human Rights, Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas, OEA/Ser.:L./V/II.163 Doc. 105 (3 July 2017) (Original Spanish), available in English at <http://www.oas.org/en/iachr/reports/pdfs/pretrialdetention.pdf> at para. 24

⁵³ Inter-American Commission on Human Rights, Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas, OEA/Ser.:L./V/II.163 Doc. 105 (3 July 2017) (Original Spanish), available in English at <http://www.oas.org/en/iachr/reports/pdfs/pretrialdetention.pdf> at para. 107.

African Human Rights System

Like the inter-American system, the African human rights system maintains both a Commission (the African Commission on Human and Peoples' Rights) and Court (the African Court on Human and Peoples' Rights). Because it is of much more recent vintage than its European and Inter-American counterparts, and because relatively few states have recognized its contentious jurisdiction, the African Court has not had nearly as many opportunities to define the contours of the rights involved in detention.

The African Commission, by contrast, has a much longer history than the Court and has documented conditions in detention centers, as well as state policies in criminal justice. The African Commission, like the Inter-American Commission, maintains a rapporteurship that monitors the use of detention, as well as conditions of detention. Through this rapporteurship, the Commission has issued guidelines on arrest, police custody, and pre-trial detention. These serve as an authoritative interpretation of the African Charter on Human and Peoples' Rights in this regard. They provide a 'toolkit' to guide authorities in their daily practices.⁵⁴ The guidelines produced by the African Commission are consistent with the logic of the United Nations and other regional systems in seeking to reduce pre-trial detention to a minimum and ensure dignified conditions for those held in closed centers. In law, pre-trial (and post-conviction)

⁵⁴ African Commission on Human and Peoples' Rights, Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (Luanda Guidelines), available at: [Toolkitfile:///C:/Users/jimca/Downloads/conditions_of_arrest_police_custody_toolkit.pdf](file:///C:/Users/jimca/Downloads/conditions_of_arrest_police_custody_toolkit.pdf), last visited December 24, 2020.

rights in Africa align with those recognized in the UN and other regional systems,⁵⁵ ensuring that “conditions in detention, including police custody and pre-trial detention, must conform to applicable international law and standards.”⁵⁶

C. Participation and Human Rights

International human rights law guarantees the right to participate in public life. Article 21 of the Universal Declaration of Human Rights, for instance, enshrines the right to “take part in the government” of one’s country.⁵⁷ While on its face this article ensures the right to serve in public office and to take part in democratic processes (through voting, for instance) participation in international human rights law has been recognized as providing a far greater role to those affected by government actions. In part, this is because other rights guaranteed in international law also include guarantees of participation. Thus, the Office of the High Commissioner on Human Rights of the United Nations has observed that, “[p]articipation rights are inseparably linked to other human rights such as the rights to peaceful assembly and association, freedom of opinion and expression and the rights to education and to information.”⁵⁸

⁵⁵ International Commission of Jurists, *Pre-Trial Rights in Africa: A Guide to International Human Rights Standards*, September 2016, available at <https://www.refworld.org/pdfid/586e6ec34.pdf>, last visited December 24, 2020.

⁵⁶ International Commission of Jurists, *Pre-Trial Rights in Africa: A Guide to International Human Rights Standards*, September 2016, p. 85, available at <https://www.refworld.org/pdfid/586e6ec34.pdf>, last visited December 24, 2020.

⁵⁷ UN General Assembly, *Universal Declaration of Human Rights* (Resolution 217A), art.21, adopted Dec. 10, 1948.

⁵⁸ United Nations Office of the High Commissioner on Human Rights, OHCHR and equal participation in political and public affairs, available at: <https://www.ohchr.org/EN/Issues/Pages/EqualParticipation.aspx#:~:text=The%20right%20to%20directly%20and%20indirectly%20participate%20in,righ-based%20approaches%20aimed%20at%20eliminating%20marginalization%20and%20discrimination.>

To clarify the contours of the right to participation in human rights, the High Commissioner in 2018 drafted and issued “Guidelines on the effective implementation of the right to participate in public affairs.”⁵⁹

With regard to participation before decision-making the guidelines state:

Rights holders should be given the opportunity to participate in shaping the agenda of decision-making processes in order to ensure that their priorities and needs are included in the identification of the subject matter and content for discussion. ...the relevant public authorities should adopt transparent and inclusive criteria and processes for the representation of members of disadvantaged groups.⁶⁰

The guidelines further specify that:

Rights holders who are directly or likely to be affected by, or who may have an interest in, a proposed project, plan, programme, law or policy should be identified and notified. Notification should be provided to all such rights holders in a timely, adequate and effective manner. In addition, the participation of any other rights holders wishing to participate should be facilitated.⁶¹

In the context of criminal justice and prison policy, communities directly affected by the operation of the criminal justice system, as well as those facing prosecution and those who have been prosecuted and incarcerated are rights holders who are directly. As such, they

⁵⁹ The document notes that it is “based on the report (found under symbol A/HRC/39/28), submitted to the Human Rights Council pursuant to its resolution 33/22, in which it requested the Office of the High Commissioner for Human Rights to submit at its 39th session, draft guidelines for States on the effective implementation of the right to participate in public affairs.” See United Nations High Commissioner on Human Rights, “Guidelines on the effective implementation of the right to participate in public affairs.” https://www.ohchr.org/Documents/Issues/PublicAffairs/GuidelinesRightParticipatePublicAffairs_web.pdf, last visited Jan. 12, 2020.

⁶⁰ Ibid., para. 64.

⁶¹ Ibid. para. 66.

should be involved in the development of state policy on incarceration, rehabilitation and reentry. In keeping with this core principle of best practices in the area of human rights, we call on the Connecticut General Assembly to take every measure necessary to ensure that these communities are able to participate in every step of the policy review process.

We now turn to the practices of other countries and particular prisons in implementing these international standards.

Comparative Analysis of Alternative Practices

In this section, we briefly turn our attention to practices in other countries with an eye to identifying models that might be useful for Connecticut as it continues to transition away from mass incarceration. From the thousands of detention centers and hundreds of potential models, we have selected a few examples of practices that focus on two main areas. First are models that engage non-incarceration as means of responding to violations of the law and treating violators. Second, we look at successful models of detention, that is prisons and closed centers to hold offenders, that treat offenders humanely and that focus on rehabilitation rather than solely on punishment. Finally, we consider programs designed to reintegrate offenders into society *after* a period in confinement.

The universe of alternatives to incarceration is quite expansive. Our summary review of models in this white paper is not designed by any means to be exhaustive or complete. Instead, we seek to raise alternatives as a means of stimulating debate in Connecticut about possible directions in the post-COVID moment of reduced incarceration. In this regard, while this section considers the experiences of other countries, we note (and have summarized above) Connecticut's significant history in rehabilitative models and alternatives to incarceration. These models have made Connecticut a national leader in this area. We support these efforts as well as their intensification. Here, we seek merely to add data and input from beyond the state, input that might be useful as Connecticut continues its investment in those who have come into

conflict with the law, as well as in the communities affected by crime and the criminal justice system.

D. The German Prison System: Emphasis on Non-Carceral Responses

The German criminal justice system has successfully diverted those in conflict with the law away from the prison system. Additionally, the German system tends to prepare incarcerated people more successfully for reentry into society through education and vocational training, transitional facilities, and medical drug counseling. We begin by providing a brief overview of German sentencing procedures and recidivism rates before surveying several case studies. Authorities in Connecticut may find lessons in the German system, particularly in its sparing use of incarceration, its programs aimed at easing reentry and its specialized treatment of vulnerable populations, particularly those with substance abuse disorders.

Germany's most significant move toward reducing its prison population occurs early in the criminal justice process. Germany's sentencing guidelines direct an extraordinarily low percentage of offenders to prison. The *Bundeskriminalamt* (Federal Bureau of Criminal Justice) estimates that there were about 5.4 million crimes committed in Germany in 2019.⁶² Nearly a third of all crimes committed were property crimes. Only around 3% of all crimes committed

⁶² Polizeiliche Kriminalstatistik 2019, Bundeskriminalamt, available at <https://www.bka.de/DE/AktuelleInformationen/StatistikenLagebilder/PolizeilicheKriminalstatistik/PKS2019/PKSTabellen/BundFalltabellen/bundfalltabellen.html?nn=130872> (last accessed Dec 20 2020)

were violent in nature.⁶³ In the same year, criminal sentences were issued against 729,000 people.⁶⁴ Of these, about 567,000 were sanctioned with only a financial penalty.⁶⁵ In other words, nearly 80% of all criminal sentences in 2019 resulted in fines alone. Very few of those sentenced to restrictions of liberty (*Freiheitsstrafe*) go to jail.⁶⁶ When possible, German law dictates that low-risk, non-violent offenders be sentenced to probation (*Freiheitsstrafe mit Bewährung*). Only when these options have been exhausted is a sentence of imprisonment considered. In 2010, for example, Germany considered 938,000 criminal cases resulting in around 725,000 convictions and sentences.⁶⁷ Of these, only 25,000 resulted in adult prison sentences.⁶⁸ Thus, of all individuals tried for crimes, only 2.7% were imprisoned in adult facilities.⁶⁹

Criminal fines in Germany work differently than they do in the US. Courts in Germany take a sentenced person's financial circumstances into account when setting the terms and conditions of a fine, and financial penalties and incarceration are almost always mutually exclusive.⁷⁰

Judges adjust fines relative to a defendant's income and assets — the more resources convicted

⁶³ Ibid.

⁶⁴ Pressemitteilung Nr. 429 vom 29. Oktober 2020, Statistisches Bundesamt, Oct 29 2020 https://www.destatis.de/DE/Presse/Pressemitteilungen/2020/10/PD20_429_243.html (last accessed Dec 20 2020)

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ Jörg-Martine Jehle *et al*, *Legalbewährung nach strafrechtlichen Sanktionen: Eine bundesweite Rückfalluntersuchung 2010 bis 2013 und 2004 bis 2013*, Bundesministerium der Justiz und für Verbraucherschutz, Berlin, 2016.

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ §40 Abs. 1 StGB

defendants have, the more their fines will be.⁷¹ This ensures that financial penalties are both fair and dissuasive. In other words, the fine amount is calibrated to affect each person equally—punishing that person and dissuading future wrongful conduct. Germany has thus been able to reduce its prison population by reducing the number of people sentenced to imprisonment in the first place. The German system exhibits a much stronger commitment to using imprisonment as an option of last resort than the US. *As a result, Germany's incarceration rate (per 100,000 residents) is less than 10% of that of the United States.*⁷²

The German system maintains a lower recidivism rate than the United States despite, or perhaps because of its sparing use of incarceration. This suggests that alternatives to prison may be more successful at reducing future crime. In 2016, the Federal Ministry for Justice and Consumer Protection (*Bundesministerium der Justiz und für Verbraucherschutz*) published one of the most comprehensive studies of German recidivism.⁷³ This study followed every person sentenced in 2010 over the following three years. It determined, in each case, if (a) that person went on to commit another crime and (b) if that person went on to receive another criminal sentence, including incarceration. The study found that 35% of all those (adults and minors) criminally sentenced in 2010 went on to commit a crime in the following three years.⁷⁴ Only

⁷¹ §40 Abs. 1 StGB

⁷² Ram Subramanian and Alison Shames, *Sentencing and Prison Practices in Germany and the Netherlands: Implications for the United States*. Vera Institute of Justice, New York, 2013.

⁷³ Jörg-Martine Jehle et al, *Legalbewährung nach strafrechtlichen Sanktionen: Eine bundesweite Rückfalluntersuchung 2010 bis 2013 und 2004 bis 2013*, Bundesministerium der Justiz und für Verbraucherschutz, Berlin, 2016.

⁷⁴ *ibid*

30% of those who received fines in 2010 committed a crime in the following three years.⁷⁵

These numbers rise slightly for those receiving probation (39%) and those who were incarcerated and released (45%).⁷⁶ They are still much lower than the US rates, however. In the United States, nearly 70% of those released from prison will be rearrested within three years.⁷⁷

The differences are equally stark when comparing those who return to prison post-arrest. The most recent US Bureau of Justice Statistics data suggest that over 45% of all those released from prison are re-incarcerated within the first three years post-release.⁷⁸ In Germany, only around 21.5% of those incarcerated return to prison within three years — about 52% less than the US.⁷⁹ This difference is likely explained by at least two key factors. First, the German system has a lower base recidivism rate: fewer crimes are committed post-release, so fewer individuals return to prison.⁸⁰ Second, however, the German system continues to divert individuals from prison even if they have a prior conviction. In the United States, prior convictions generally result in stricter sentences for repeat offenders. In Germany, however, many repeat offenders are given fines or placed on probation, thus keeping them from returning to prison.⁸¹

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ Matthew R. Durose, Alexia D. Cooper, Ph.D., and Howard N. Snyder. *Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010*, US Dept. of Justice, Bureau of Justice Statistics, Washington D.C., 2014.

⁷⁸ Ibid.

⁷⁹ Jörg-Martine Jehle *et al*, *Legalbewährung nach strafrechtlichen Sanktionen: Eine bundesweite Rückfalluntersuchung 2010 bis 2013 und 2004 bis 2013*, Bundesministerium der Justiz und für Verbraucherschutz, Berlin, 2016.

⁸⁰ Ibid.

⁸¹ Ibid.

The German system is also more respectful of those who are ultimately incarcerated. The remainder of this section focuses on two organizing principles of German criminal justice: the principle of normality and the principle of equivalent care. The principle of normality states that conditions within prisons should reflect the outside world as closely as possible. The principle of equivalence of care states that healthcare within prisons should be equivalent to healthcare outside prisons; deprivation of healthcare is an inhumane punishment that goes beyond the deprivation of liberty. Both of these principles reflect commitments to the core tenets of international human rights instruments. As this report argues, heeding these principles may result in reduced recidivism and increase long-term welfare for those incarcerated and their communities.

As a rule, US prisons allow those in prison to bring very few personal items into their cells. US facilities issue uniforms and routinely confiscate or destroy anything beyond the most basic personal items, such as envelopes or underwear. In contrast, German facilities tend to encourage incoming inmates to bring personal items for entertainment, correspondence, and decoration. German inmates, for example, may bring into prisons televisions, electronic typewriters, board games, posters and photos for decoration, books, radios, houseplants, or

coffee machines.⁸² In many facilities, inmates may wear their own clothing.⁸³ Certain restrictions do apply to these items: for example, clothing may not support violent factions, and electronic devices may not access the internet. Nevertheless, the more permissive policy allows inmates to better personalize their cells and engage in more meaningful activities in their free time.⁸⁴ This creates an environment in which those incarcerated do not suffer additional loss of self or depersonalization that attends the loss of personal items.

Many prisons in the state of Nordrhein-Westfalen (“NRW”) have also sought to bring normalcy to their educational offerings. The JVA Iserlohn facility, located approximately 13 miles from the city of Dortmund, is a youth prison. The educational offerings at Iserlohn are notable in that they seek to replicate the middle- and high-school experience of non-incarcerated German students.⁸⁵ The prison facility has its own school building, which looks like any other German high school building. The building does not have bars on its windows and has small classrooms

⁸² See “Liste der genehmigungsfähigen Gegenstände,” Feb. 1 2020, Justizministerium Mecklenburg-Vorpommern, available at http://www.justiz-in-mv.de/static/STRAFA/JVAHST/Dateien/Dokumente/Liste%20genehmigungsf%C3%A4hige%20Gegenst%C3%A4nde_neu_A-Z_01_02.pdf (last accessed on Dec 20, 2020).

⁸³ Ibid.

⁸⁴ See Sina Niemeyer, “Diese Fotografin zeigt, wie Häftlinge ihre Zellen einrichten,” May 5, 2017, *Vice News* available at <https://www.vice.com/de/article/9aez8e/diese-fotografin-zeigt-wie-haftlinge-ihre-zellen-einrichten> (last accessed Dec. 20, 2020) and “Knast in Deutschland,” *ZDF*, available at <https://www.zdf.de/dokumentation/zdfinfo-doku/knast-in-deutschland-strafe-liebe-hoffnung-102.html> (last accessed Dec. 20, 2020).

⁸⁵ Description of the school at Iserlohn <https://www.jva-iserlohn.nrw.de/aufgaben/schule/index.php> (last accessed Dec. 20, 2020) See also Sabine Schweer, “Sozialpädagogische Bausteine im Jugendvollzug – eine Kooperation zwischen Jugendvollzug und Universität” in *Delinquenz bei jungen Menschen* (Anne Kaplan and Stefanie Roos eds.), published 2021, online Sept. 2020, available at https://link.springer.com/chapter/10.1007%2F978-3-658-31601-3_16

— fitting no more than 12 students at a time — with highly qualified teachers.⁸⁶ The school has a computer room, where students can develop technological literacy, as well a woodworking, metalworking, and electronics shop, where students gain technical skills.⁸⁷ On graduation, students receive a qualification from the nearby Hönnе vocational college.⁸⁸ This certificate makes no mention that the corresponding education was received in prison.⁸⁹ This allows incarcerated students to receive a quality practical education comparable to that received outside of Iserlohn, and it does not prejudice students when seeking employment. A similar program for adults exists at the JVA Bochum, also in NRW, where adults may receive vocational qualifications upon successful completion of an apprenticeship while in prison.⁹⁰ These qualifications are backed by the German Chamber of Industry and Commerce, and they make no reference to the fact that the apprenticeship was undertaken in the JVA Bochum.⁹¹

The library program at the JVA Münster facility also demonstrates the success of normalized facilities in Germany. Named ‘German Library of the Year’ in 2007, the Münster Library was designed by a well-known architectural firm to mirror the state library in Münster.⁹² As such, the library is colorful, well-lit, and large: it contains workspaces, desktop computers, relaxation

⁸⁶ *ibid*

⁸⁷ *ibid*

⁸⁸ *ibid*

⁸⁹ *ibid*

⁹⁰ “Arbeit und Ausbildung,” JVA Bochum, available at https://www.jva-bochum-langendreer.nrw.de/aufgaben/arbeit_ausbildung/index.php (last accessed Dec. 21, 2020).

⁹¹ *ibid*

⁹² Gefangenenbücherei, JVA Münster, available at https://www.jva-muenster.nrw.de/aufgaben/freizeit_der_gefangenen/buecherei/index.php (last accessed Dec. 21, 2020).

rooms, and stations for listening to music. Inmates staff the library and do so using the same information software used in libraries across Germany.⁹³ The library contains nearly 10,000 items in over 32 languages.⁹⁴ Over 80% of inmates report regularly using the facility to read, to learn new skills, or to simply relax.⁹⁵ A survey of library users at JVA Münster found that they read, on average, for more than thirteen hours a week. As one respondent put it, the library helps him “avoid decaying” while incarcerated.⁹⁶ By contrast, prison libraries in the US face reductions to their often minimal collections.⁹⁷ Private initiatives, such as the Million Book Project, recognize the importance of reading and seek to expand reading opportunities available for those incarcerated in the US.⁹⁸ Libraries and other facilities in Germany represent a key method for bringing educational opportunities into prisons in a way that both reflects the workings of the outside world and that offers respite from other dehumanizing aspects of incarceration.

⁹³Ibid.

⁹⁴ Ibid.

⁹⁵ Ibid.

⁹⁶ Gerhard Peschers, “Books Open Worlds for People Behind Bars,” *Library Trends* 59(3), Winter 2011.

⁹⁷ See: *Literature Locked Up: How Prison Book Restriction Policies Constitute the Nation’s Largest Book Ban*, Pen America, September 2019, available at: <https://pen.org/wp-content/uploads/2019/09/literature-locked-up-report-9.24.19.pdf> Prison libraries at times face censorship that has led to extreme and often bizarre outcomes. In Texas, for example, state prison libraries prohibit *The Color Purple* and *A Charlie Brown Christmas*. See Mathew Haag, “Texas Prisons Ban 10,000 Books. No ‘Charlie Brown Christmas’ for Inmates.” *New York Times*, Dec. 7, 2017, available at: <https://www.nytimes.com/2017/12/07/us/banned-books-texas-prisons.html> (last accessed December 21, 2020)

⁹⁸ The website of the Million Book Project asserts that it will “bring curated 500-book literary time-capsules to 1,000 prisons and juvenile detention centers to each state in the United States, Washington, D.C., and Puerto Rico.” See <https://law.yale.edu/justice-collaboratory/our-work/projects/million-book-project>.

The German system also deploys a distinction between closed and open prison (*Geschlossener Vollzug* vs. *offener Vollzug*). Closed prisons are standard prisons with locking cells, fences, and external walls. In contrast, open prisons are much more like the halfway houses used in the transition between closed prison and reentry into society. While in open prisons, inmates may hold jobs outside the prison and are under less direct supervision.⁹⁹ Those in open prisons may also remain in closer contact with their families or visit them on weekends.¹⁰⁰ In NRW, nearly 30% of all inmates will spend some time in an open facility before their release, allowing them to re-orient themselves in open society before moving to fully independent living.¹⁰¹ Open facilities in Germany are managed by the state, not by private entities, unlike in the United States, where many private halfway houses are frequently underfunded, lack regulation, or are otherwise mismanaged to the detriment of those living there.¹⁰² The German open facility model offers a clear transition point between prison and social re-entry which allows incarcerated people to develop skills and relationships in a state-run, supervised setting.

⁹⁹ "Offener Vollzug," Die Justiz des Landes Nordrhein-Westfalen, available at

https://www.justiz.nrw.de/BS/recht_a_z/O/Offener_Vollzug/index.php (last accessed Dec. 23 2020).

¹⁰⁰ See Ralf Michel, "Wie der Offene Vollzug in der JVA-Bremen abläuft," *Weser Kurier*, July 12 2020, available at https://www.weser-kurier.de/bremen/bremen-stadt_artikel,-wie-der-offene-vollzug-in-der-jvabremen-ablaeuft-arid,1923036.html (last accessed Dec. 23, 2020). One incarcerated person named Can stated in an interview with *Die Zeit* that the open facility allowed him to maintain contact with his family, and if he had not been in an open facility, he believes that his relationship with his girlfriend would not have lasted. Crucially, because this relationship has lasted, Can has been able to make clear plans for his re-entry into unsupervised society. *Ibid.*

¹⁰¹ Martin Kotynek, Stephan Lebert and Daniel Müller, "Die Schlechterungsanstalt," *Die Zeit*, August 16, 2012, available at <https://www.zeit.de/2012/34/DOS-Gefaengnisse-Deutschland-Gewalt/seite-3> (last accessed Dec. 23 2020).

¹⁰² See Lauren Sukin, "When Jail Is The Better Option: The Failure of Halfway Houses," The Century Foundation, June 23 2015, available at <https://tcf.org/content/commentary/when-jail-is-the-better-option-the-failure-of-halfway-houses/?agreed=1> (last accessed Dec 23 2013) and Sam Dolnick "Pennsylvania Study Finds Halfway Houses Don't Reduce Recidivism," *The New York Times*, March 24, 2013, available at <https://www.nytimes.com/2013/03/25/nyregion/pennsylvania-study-finds-halfway-houses-dont-reduce-recidivism.html> (last accessed Dec 23 2013).

The prisons of NRW also pay close heed to the principle of equivalent care in their treatment of vulnerable populations, especially those with substance abuse disorders. Broadly, the principle of equivalent care holds that incarcerated people should receive healthcare equivalent to that received by the non-incarcerated population. One area where this is particularly important is in the treatment of substance abuse disorders. Many incarcerated people struggle with various forms of substance abuse, from alcoholism to opioid addiction. For the incarcerated population, opioid addiction is particularly problematic. Ongoing opioid abuse is correlated both with recidivism and premature death.¹⁰³

One particularly well-studied treatment for opioid abuse is opioid substitution therapy (“OST”). Patients receiving OST regularly consume an opioid replacement, such as methadone or buprenorphine. These drugs are opioid agonists, meaning that they bind strongly to opioid receptors in the brain. This chemical reaction reduces or eliminates symptoms of withdrawal, reducing cravings for opioids. If a patient consumes an opioid while on OST, the associated euphoria or “high” is significantly reduced if not eliminated. As a part of a broader drug

¹⁰³ Heino Stöver and Ingo Michels “Drug use and opioid substitution treatment for prisoners,” *The Journal of Harm Reduction* 7(17), 2010; GW Joe *et al* “Recidivism among opioid addicts after drug treatment: an analysis by race and tenure in treatment,” *The American Journal of Drug and Alcohol Abuse* 9(4), 1982; and Natasa Gisev *et al*, “Determining the impact of opioid substitution therapy upon mortality and recidivism among prisoners: A 22 year data linkage study,” *Trends & issues in crime and criminal justice no. 498*. Canberra: Australian Institute of Criminology.

treatment plan, OST can be used to improve long-term psychological functioning, strengthen social reintegration, and reduce comorbid substance abuse disorders, such as alcoholism.¹⁰⁴

It is estimated that over 30% of those incarcerated in Germany have a clinical form of substance abuse disorder.¹⁰⁵ In Nordrhein-Westfalen, OST is widely available, and 50% of the estimated opioid-dependent incarcerated population receive OST in NRW facilities.¹⁰⁶ This mirrors the proportion of non-incarcerated receiving OST.¹⁰⁷ In other words, the prisons of NRW fulfill the principle of equivalent care, which states that medical treatment inside of prisons should be equivalent to care outside of prison, if not better. To our knowledge, the relationship between OST and the drug trade inside prisons has not yet been empirically studied. It may well be that OST might combat illicit drug trade within prisons by decreasing the *de facto* demand for opioids. The US situation with regard to OST is starkly different. In the United States, many incarcerated people with substance abuse disorder do not receive adequate treatment—for example, many of those on Opioid Substitution Therapy pre-incarceration must stop on entry into prison.¹⁰⁸ Most prison facilities in the US do not offer OST, and when they do, it is offered

¹⁰⁴ Florence Noble and Nicolas Marie, “Management of Opioid Addiction With Opioid Substitution Treatments: Beyond Methadone and Buprenorphine,” Published Online Jan 18, 2019, *Frontiers in Psychiatry* 9, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6345716/>; Heino Stöver and Ingo Michels “Drug use and opioid substitution treatment for prisoners,” *The Journal of Harm Reduction* 7(17)

¹⁰⁵ Heino Stöver *et al*, “Opioid substitution therapy for people living in German prisons—inequality compared with civic sector,” *Harm Reduction Journal*, December 2019, available at <https://harmreductionjournal.biomedcentral.com/articles/10.1186/s12954-019-0340-4/tables/1>

¹⁰⁶ *Ibid.*

¹⁰⁷ https://www.deutschlandfunk.de/suchtkranke-in-deutschen-gefaengnissen-drogen-hinter-gittern.724.de.html?dram:article_id=447618

¹⁰⁸ <https://pubmed.ncbi.nlm.nih.gov/29282239/>
<https://pubmed.ncbi.nlm.nih.gov/26028120/>;

to a relatively low percentage of those with an opioid abuse disorder.¹⁰⁹ This may drive those in prisons to seek illicit opioids to avoid withdrawal symptoms.¹¹⁰ As opioid addiction ravages the United States, particularly within its prisons, US criminal justice facilities should develop more robust drug treatment plans that bring together OST with other forms of behavioral therapy.¹¹¹ Doing so would not only respect human rights norms and the principle of equivalent care, but moreover would serve to lower recidivism, reduce mortality among the incarcerated population, and may combat illicit drug trading within prisons.

E. Norway: Humanization and Dynamic Security in Prisons Reduces Recidivism

Prisons in Norway have been the subject of considerable study in both peer-reviewed, academic literature and journals, as well as in leading media sources. Observers are uniformly impressed with the humane nature of treatment and the dignified conditions in Norwegian detention centers. In the past five years, apart from studies in technical journals considered below, there have been in-depth articles in *The New York Times*, *The Guardian*, *Business Insider* and other media sources. The title of an article written by Jessica Benko, in *The New York Times*,

¹⁰⁹ Kevin Fiscella *et al* "Alcohol and Opiate Withdrawal in US Jails," Sept. 2004, *The American Journal of Public Health* 94(9), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1448487/>; "How is opioid use disorder treated in the criminal justice system?," *National Institute on Drug Abuse*, 13 Apr. 2020, available at <https://www.drugabuse.gov/publications/research-reports/medications-to-treat-opioid-addiction/how-opioid-use-disorder-treated-in-criminal-justice-system> (Last Accessed 30 Dec. 2020)

¹¹⁰ Shannon Mitchell *et al* "Incarceration and opioid withdrawal: The experiences of methadone patients and out-of-treatment heroin users," June 2009, *The Journal of Psychoactive Drugs* 41(2), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2838492/>

¹¹¹ See "Criminal Justice Drug Facts," National Institutes of Health, available at <https://www.drugabuse.gov/publications/drugfacts/criminal-justice#ref>

provides a sense of the view of these observers: “The Radical Humaneness of Norway’s Halden Prison.”¹¹² Benko describes the facilities at Halden prison, the investment in developing the independence and responsibility of those detained, and the constructive atmosphere in the center fostered in by the relationship between the prison guards and those guarded or, rather, supervised.

Explaining the atmosphere within the center itself, Halden focuses on what the Norwegians term ‘dynamic security,’ “a philosophy that sees interpersonal relationships between the staff and the inmates as the primary factor in maintaining safety within the prison.”¹¹³ Benko explains that guards and prisoners live in close quarters and thus interact and socialize regularly. Benko notes that “[d]ynamic security focuses on preventing bad intentions from developing in the first place.”¹¹⁴

An article in *Business Insider* focuses on the ordinary, non-prison-like nature of Halden prison, observing:

The 75-acre facility maintains as much "normalcy" as possible. That means no bars on the windows, kitchens fully equipped with sharp objects, and friendships between guards and inmates. For Norway, removing people's freedom is enough of a punishment.¹¹⁵

¹¹² Jessica Benko, “The Radical Humaneness of Norway’s Halden Prison”, *New York Times*, 2015, available at <https://www.nytimes.com/2015/03/29/magazine/the-radical-humaneness-of-norways-halden-prison.html>.

¹¹³ Ibid.

¹¹⁴ Ibid.

¹¹⁵ Christopher Sterbenz “Why Norway’s Prison System is so Successful” *Business Insider*, 2014, available at <https://www.businessinsider.com/why-norways-prison-system-is-so-successful-2014-12>

Other journalistic pieces recognize the absence of security filters, metal bars, cement blocks, guard posts and other trappings associated with high security prisons in the United States. An article on Halden in *The Guardian* notes that:

Cells had televisions, computers, integral showers and sanitation...Instead of wings and landings they lived in small "pod" communities within the prison, limiting the spread of the corrosive criminal prison subculture that dominates traditionally designed prisons.

The humanization and dignified environment has consistently impressed observers from the United States (and the UK) as unusual, given the stark nature of our prisons. As much as the difference in the physical plant, though, observers are overcome by the success of the interpersonal relations emphasized in the Norwegian model. The focus on rehabilitation and training for life after detention—by treating detainees like the citizens they will be on release—has proven to be far more successful than the punitive model of prisons in the United States. Studies undertaken by social scientists with experience in prisons and recidivism have demonstrated that Norwegian detention centers in general are extremely successful at reintegrating those who spend time in the system. Remarkably, as we detail below, research demonstrates that those who spend time in Norway's prisons are *less likely* to commit crimes after release than those who have not been to prison.

Recidivism

An important—if not the most important measure of the success of sanctions and treatment directed at for those who have committed crimes—is the likelihood that the person in conflict

with the law will offend again. Sanctions other than prison allow the offender to seek employment, education, job-training and otherwise engage in productive activities. By contrast, while the stated goal of prisons is often rehabilitation and reintegration into society, those who have spent time incarcerated find they have developed few if any life skills. As a result, they find their options on release quite limited. This is a result of a range of factors, including the time lost while incarcerated, and the stigma associated with conviction and loss of ties with one's community. Not surprisingly, many of those who have been incarcerated offend again and return to the criminal justice system. At the same time, the difficulties of prison life often serve as a disincentive to future criminality. In all, studies of recidivism are mixed. While comparison between those incarcerated and those not sentenced to prison clearly demonstrate the effect of prison as a specific deterrent (during the period of detention), studies of rates of recidivism over a longer period show mixed results.¹¹⁶

Remarkably, the Norwegian prison system bucks this trend and shows clear, positive effects of incarceration. A recent study by a team of social scientists from the United States and Norway demonstrated the success of education, job training and treatment programs in Norwegian

¹¹⁶ See, e.g., Manudeep Bhuller Gordon B. Dahl Katrine V. Løken Magne Mogstad, "Incarceration, Recidivism and Employment," Working Paper 22648, Cambridge, MA, 2016, available at: https://www.researchgate.net/publication/311268902_Incarceration_Recidivism_and_Employment, last accessed December 21, 2020 (noting that, "Kling (2006) presents results suggesting that time in prison improves labor market outcomes after release...Green and Winik (2010) and Loeffler (2013) report no detectable effects of incarceration on recidivism, whereas Aizer and Doyle (2015) find that juvenile incarceration results in lower high school completion rates and higher adult incarceration rates. Mueller-Smith (2015) uses data from Texas to investigate the impacts of adult incarceration and reports that incarceration increases recidivism rates, and worsens labor market outcomes.").

prisons in significantly reducing recidivism among those who had spent time incarcerated. The study compared a large cohort of offenders across the criminal justice system over a period of years. The researchers considered thousands of cases decided between 2005 and 2009 and then continued to review those involved for another five years, from 2009 to 2014. In all the sample included 33,509 cases, 23,345 unique defendants and 500 judges.¹¹⁷

The study found a strong correlation between professional and job training in prison and success—and therefore, non-recidivism—after prison. The greatest difference observed was between those employed before their time in prison and those who were not. The former group—those who had been employed, showed no significant difference in recidivism compared to a control group that had not been in prison. However, those without work experience were significantly less likely to offend after prison. As the authors observe:

...incarceration not only reduces the probability of re-offending among the previously non-employed, but also the number of crimes they commit. Five years out, this group is estimated to commit 22 fewer crimes per individual if incarcerated. By comparison, previously employed individuals experience no significant change in recidivism due to incarceration.¹¹⁸

The authors explain this result in terms of the environment and training opportunities available inside Norwegian prisons. As they thus conclude,

¹¹⁷ Manudeep Bhuller Gordon B. Dahl Katrine V. Løken Magne Mogstad, “Incarceration, Recidivism and Employment,” Working Paper 22648, Cambridge, MA, 2016, available at: https://www.researchgate.net/publication/311268902_Incarceration_Recidivism_and_Employment, last visited December 21, 2020, p. 11.

¹¹⁸ Manudeep Bhuller Gordon B. Dahl Katrine V. Løken Magne Mogstad, “Incarceration, Recidivism and Employment,” Working Paper 22648, Cambridge, MA, 2016, available at: https://www.researchgate.net/publication/311268902_Incarceration_Recidivism_and_Employment, (last visited December 21, 2020), p.13

Our study serves as a proof-of-concept demonstrating that time spent in prison with a focus on rehabilitation can indeed be preventive. The Norwegian prison system is successful in increasing participation in job training programs, encouraging employment, and discouraging crime, largely due to changes in the behavior of individuals who were not working prior to incarceration.¹¹⁹

As a result of the effectiveness of skills training, education and other programs undertaken in prisons in Norway, those who spend time in prisons *are actually less likely* to commit crimes on release than those who have not been incarcerated. This conclusion is borne out not only by this study, but also others that have examined the success of the Norwegian model.¹²⁰

The authors of the ten-year Norwegian study explain the bases for the success of incarceration in Norway as the consequence of job training in prison, combined with support after prison.

They write:

While offenders in Norway may lose their job when going to prison, they are usually not asked or required to disclose their criminal record on most job applications. This stands in contrast to the U.S. Moreover, while gaps will still appear on employment resumes, these will often span months rather than years due to shorter prison spells. Upon release all inmates have access to support from the Norwegian work and welfare services. This includes work training programs and help searching for a job, as well as access to a variety of social support programs such as unemployment benefits, disability insurance and social assistance.¹²¹

¹¹⁹ Manudeep Bhuller Gordon B. Dahl Katrine V. Løken Magne Mogstad, "Incarceration, Recidivism and Employment," Working Paper 22648, Cambridge, MA, 2016, available at: https://www.researchgate.net/publication/311268902_Incarceration_Recidivism_and_Employment, (last visited December 21, 2020), p.13

¹²⁰ See Christin Tønseth and Ragnhild Bergsland, "[Prison Education in Norway - The Importance for work and life after release](https://www.tandfonline.com/doi/full/10.1080/2331186X.2019.1628408)," *Cogent Education*, 2019, noting that "There are multiple studies that have examined whether job training has reduced the number of relapses (Smith, Bechtel, Patrick, & Smith, 2006; Uggen, 2000). The overall conclusion from these studies is that job training leads to a closer connection to society and thus reduces relapse," available at <https://www.tandfonline.com/doi/full/10.1080/2331186X.2019.1628408>

¹²¹ Manudeep Bhuller Gordon B. Dahl Katrine V. Løken Magne Mogstad, "Incarceration, Recidivism and Employment," Working Paper 22648, Cambridge, MA, 2016, available at: https://www.researchgate.net/publication/311268902_Incarceration_Recidivism_and_Employment, (last visited December 21, 2020), p.13

Much of what the authors assert in comparing the experience in Norway as compared to the United States applies to Connecticut, though perhaps in lesser degree given the state's history of prison reform.

F. Restorative Justice: Lessons from the US, Canada and Beyond

The term “restorative justice” refers to a wide range of post-conviction options that focus on addressing the needs of victims and the broader goals of justice beyond punishment. One widely cited definition asserts that “restorative justice is a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future.”¹²²

According to Dr. Marilyn Armour, director of the Institute for Restorative Justice and Restorative Dialogue at the University of Texas at Austin, School of Social Work:

Restorative justice views crime not as a depersonalized breaking of the law but as a wrong against another person. It attends to the broken relationships between three players: the offender, the victim, and the community. Accordingly, restorative justice seeks to elevate the role of crime victims and community members; hold offenders directly accountable to the people they have harmed; and restore, to the extent possible, the emotional and material losses

¹²² Tony F. Marshall, “The evolution of restorative justice in Britain,” in *European Journal on Criminal Policy and Research* 4 (4): 21-43, cited in Lindsay Fulham, “The Effectiveness of Restorative Justice Programs: A Meta-Analysis of Recidivism and Other Outcomes,” (thesis submitted to the Faculty of Graduate and Postdoctoral Affairs in partial fulfillment of the requirements for the degree of Master of Arts in Psychology), Carleton University, Ottawa, Ontario (2018), available at https://curve.carleton.ca/system/files/etd/bf9aa4b2-db91-4815-90fa-c52dbd95ae4f/etd_pdf/c5ec89943c9a0a1c5a25a65ac106d4fe/fulham-theeffectivenessofrestorativejusticeprograms.pdf.

of victims by providing a range of opportunities for dialogue, negotiation, and problem solving.¹²³

Among the many modalities contemplated by the umbrella term, one finds three common forms: victim-offender mediation, conferences, and circles. Victim-offender mediation is the most common form of restorative justice in the United States, Canada and Europe. Also termed ‘victim-offender reconciliation,’ this approach was first employed in Kitchener, Ontario in response to a vandalism spree by two teenagers in 1974. In that instance, a probation officer proposed to the presiding judge that the youth should meet the victims and make amends. The judge agreed and ordered the youth to make reparations to those harmed. The parties involved and local authorities were satisfied, leading to the Kitchener Victim/Offender Reconciliation Project¹²⁴ The success of the experimental approach led to its proliferation in Canada and beyond.

Family-group conferences originated in New Zealand. These conferences begin with an introduction by the facilitator and the participants who then describe “how the crime affected them, how these harms may be repaired, and how to encourage the fulfillment of these

¹²³ Marilyn Armour, “Restorative Justice: Some Facts and History,” available at <https://charterforcompassion.org/restorative-justice/restorative-justice-some-facts-and-history>, (last accessed Dec. 23, 2020)

¹²⁴ James Bonta, Suzanne Wallace-Capretta, Jennifer Rooney and Kevin McAnoy, “An outcome evaluation of a restorative justice alternatives to incarceration,” *Contemporary Justice Review* 5(4), (2002), 319-338.

reparations.”¹²⁵ These conferences seek to bring participants together to develop non-carceral solutions.

In Canada, circles are understood to have “originated from Indigenous practices in North America and involve[] a discussion between the offender, victim, and community facilitated by a judge or respected elder. All members are given opportunities to speak and to contribute to the decision regarding how the injustice will be resolved.”¹²⁶

Restorative justice approaches share certain common elements. They all require voluntary participation, face-to-face encounters of those involved (if possible), discussion, accountability, and reintegration of the person who has offended (through recognition and reparations) into the community.

It should be noted here that some of these innovations have been adopted or adapted in Connecticut, especially for juveniles. The Restorative Justice Practices Project is a joint initiative

¹²⁵ Lindsay Fulham, “The Effectiveness of Restorative Justice Programs: A Meta-Analysis of Recidivism and Other Outcomes,” (thesis submitted to the Faculty of Graduate and Postdoctoral Affairs in partial fulfillment of the requirements for the degree of Master of Arts in Psychology), Carleton University, Ottawa, Ontario (2018), available at [continued next page] https://curve.carleton.ca/system/files/etd/bf9aa4b2-db91-4815-90fa-c52dbd95ae4f/etd_pdf/c5ec89943c9a0a1c5a25a65ac106dafa/fulham-theeffectivenessofrestorativejusticeprograms.pdf, p.10.

¹²⁶ Lindsay Fulham, “The Effectiveness of Restorative Justice Programs: A Meta-Analysis of Recidivism and Other Outcomes,” (thesis submitted to the Faculty of Graduate and Postdoctoral Affairs in partial fulfillment of the requirements for the degree of Master of Arts in Psychology), Carleton University, Ottawa, Ontario (2018), available at https://curve.carleton.ca/system/files/etd/bf9aa4b2-db91-4815-90fa-c52dbd95ae4f/etd_pdf/c5ec89943c9a0a1c5a25a65ac106dafa/fulham-theeffectivenessofrestorativejusticeprograms.pdf, p.9.

of the Tow Youth Justice Center at the University of New Haven and the Child Health and Development Institute (Farmington, CT).¹²⁷ The enterprise has brought restorative practices into Connecticut schools with the aim of reducing the number of youth who come into conflict with the law, and ultimately, who may be incarcerated in a youth facility or adult prison.¹²⁸ The Regional Youth Adult Social Action Partnership, based in Bridgeport, has also provided restorative interventions for the greater Bridgeport community.¹²⁹ In particular, the organization facilitates mediation services between youth and those they may have harmed.

Through the Juvenile Review Board, the program is able to successfully divert non-violent juvenile cases from the correctional system and the Youth Services Bureau.¹³⁰ Local community groups in Connecticut have also pioneered important restorative practices. In Hartford, the Community Restorative Justice Center offers a wide range of programs for victims and offenders founded on restorative principles.¹³¹ Through mediation, “accountability circles” and “restoration panels,” those who have caused harm are able to claim responsibility and make amends. Through partnership with state law enforcement, the Center has successfully diverted individuals from trial into restorative programs.

¹²⁷ Main page of the RJPP available at <https://towyouth.newhaven.edu/rjpp/>

¹²⁸ Main page of the RJPP available at <https://towyouth.newhaven.edu/rjpp/>

¹²⁹ Main page of the RYASAP available at <http://www.ryasap.org/>

¹³⁰ “Juvenile Review Board,” RYASAP available at <http://www.ryasap.org/what-we-do/juvenile-review-board/>

¹³¹ “Programs,” Community Restorative Justice Center, available at <https://hartfordjusticecenter.org/programs/>

The Efficacy of Restorative Justice

Restorative justice may respond more effectively to the goals of victims than traditional, punishment-centered processes, such as prosecution and incarceration. While the interests and preferences of victims vary greatly, researchers have documented high levels of victim dissatisfaction with traditional criminal justice practices in the United States. The victims' rights movement launched in the 1980s tapped into perceived levels of victim dissatisfaction. As law professors Lara Bazelon and Bruce A. Green note in a 2020 law review article,

Reformers recognized that in seeking to vindicate the interests of crime victims as well as the public generally, the traditional way of prosecuting criminal cases, including but not limited to sexual assault cases, often caused even greater misery for victims.¹³²

As Bazelon and Green observe, in the context of sexual violence, the traditional criminal justice approach (investigation, prosecution through trial and conviction), is less appealing to many victims than restorative justice. As they explain:

The criminal process holds out the promise of a conviction and prison sentence for the offender. But the victim's psychological well-being may be better served in a restorative justice process, if the offender is equally willing to undertake it. In a restorative justice process, supportive community members participate, the victim can tell her story her way, and the offender acknowledges and apologizes for the harm he caused, shows insight into his behavior, accepts responsibility, and takes affirmative steps to repair the harm and not to harm others.¹³³

Thus, a compelling case for restorative justice may be made based on the preferences of victims alone. In the pages that follow, however, we focus on the benefits of restorative justice in

¹³² Lara Bazelon; Bruce A. Green, "Victims' Rights from a Restorative Perspective," *Ohio State Journal of Criminal Law* 17(2), Spring 2020, 293-334, p. 300.

¹³³ Lara Bazelon; Bruce A. Green, "Victims' Rights from a Restorative Perspective," *Ohio State Journal of Criminal Law* 17(2), Spring 2020, 293-334, p. 316.

terms of the two main objectives of criminal justice policy considered in this white paper: recidivism and cost-effectiveness. To do so, we consider collective analyses of restorative justice programs.

Leading Canadian restorative justice scholars James Bonta, Suzanne Wallace-Capretta, Jennifer Rooney and Kevin McAnoy assessed prior studies in the area to assess their effectiveness in 2002. They identified 30 studies with 46 data points evaluating the correlation between restorative justice mechanisms and recidivism rates. They noted that studies diverged widely. Many had no comparison group, were not randomized and differed widely in their definition of restorative justice. Still, their review of these studies enabled them to detect a reduction in recidivism over the entire body on the order of 3%.¹³⁴

The research team led by Bonta then designed a controlled study in Manitoba to assess the efficacy of restorative justice programs in that province. They collected data on over 1,000 offenders in the province for a period of several years. From that group, they selected those directed to restorative justice outcomes who could be compared with a cohort (with similar criminal backgrounds and demographics) sentenced to traditional punishments. The researchers tracked the two groups over several years and found that for all time periods assessed—one year, two years and three years—the recidivism rate for those in restorative

¹³⁴ James Bonta, Suzanne Wallace-Capretta, Jennifer Rooney and Kevin McAnoy, "An outcome evaluation of a restorative justice alternatives to incarceration," *Contemporary Justice Review* 5(4), (2002), p. 322.

justice programs was significantly lower. The observed reduction in recidivism was significantly larger than the .03 phi levels (3%) across the meta-analysis, ranging from .09 (9%) to .31 (31%). Because offender risk was matched between the two cohorts, risk level could not be said to be a factor in the different levels of recidivism.¹³⁵

Sixteen years later, Canadian researcher Lindsay Fulham undertook a meta-analysis of restorative justice programs in 2018. She summarized prior meta-analyses in the field in these terms:

Several meta-analyses have been conducted that summarize the literature on the efficacy of [restorative justice] in reducing recidivism and other outcomes. Overall, these studies support the efficacy of [these] programs in reducing recidivism in both juvenile and adult offenders (e.g., Bradshaw et al., 2006; Latimer et al., 2005). For example, Latimer and colleagues (2005) examined the effectiveness of [restorative justice] programs in reducing recidivism and improving other outcomes such as victim satisfaction in both youth and adult offenders. In their analysis of 22 studies, [restorative justice] was found to be significantly more effective than traditional justice methods in reducing recidivism, increasing offender and victim satisfaction, and improving offender compliance with restitution agreements (Latimer et al., 2005).¹³⁶

Fulham's re-analysis of dozens of studies on restorative justice concludes that, on the whole, such programs reduce recidivism and enjoy higher levels of satisfaction than traditional justice.

¹³⁵ James Bonta, Suzanne Wallace-Capretta, Jennifer Rooney and Kevin McAnoy, "An outcome evaluation of a restorative justice alternatives to incarceration," *Contemporary Justice Review* 5(4), (2002), p. 332.

¹³⁶ Lindsay Fulham, "The Effectiveness of Restorative Justice Programs: A Meta-Analysis of Recidivism and Other Outcomes," (thesis submitted to the Faculty of Graduate and Postdoctoral Affairs in partial fulfillment of the requirements for the degree of Master of Arts in Psychology), Carleton University, Ottawa, Ontario (2018), available at https://curve.carleton.ca/system/files/etd/bf9aa4b2-db91-4815-90fa-c52dbd95ae4f/etd_pdf/c5ec89943c9a0a1c5a25a65ac106dafa/fulham-theeffectivenessofrestorativejusticeprograms.pdf, p.21 (citing, W. Bradshaw, D. Roseborough, & M. S. Umbreit, (2006), The effect of victim offender mediation on juvenile offender recidivism. A meta-analysis. *Conflict Resolution Quarterly*, 24(1), 87-98. doi:10.1002/crq.159 and J. Latimer, C. Dowden, & D. Muise, (2005). The effectiveness of restorative justice practices: A meta-analysis. *The Prison Journal*, 85(2), 127-144. doi:10.1177/0032885505276969

Fulham's 2018 study meta-data analysis was complicated in significant measure by the "wide variation in the principles, techniques, and goals of [restorative justice] programs" evaluated.¹³⁷ In the 2018 meta-analysis, Fulham sought to correct six problems that it identified in prior meta-analyses studies by categorizing studies to account for variations; controlling and scoring for adherence to restorative justice principles; accounting for and coding based on offender characteristics; including a standardized assessment tool to account for methodological quality differences; and accounting for all possible outcome variables and not only recidivism. The study examined a total of more than 50 prior studies in Australia (10), Canada (6), the Netherlands (1), New Zealand (5), Spain (1) Thailand (1), the United Kingdom (6) and the United States (25). In all, the 2018 study presents a thoughtful, comprehensive and updated assessment of prior research on restorative justice.¹³⁸

The study concludes that:

The findings from 59 studies on 67 samples examining the effectiveness of [restorative justice] programs were analyzed. The results revealed that [restorative justice] was associated with significant moderate reductions in general recidivism and improvements in satisfaction, procedural justice, offender accountability, offender attitudes, and reoffence severity. There were significant sample, study, and program moderators for general recidivism and victim

¹³⁷ Lindsay Fulham, "The Effectiveness of Restorative Justice Programs: A Meta-Analysis of Recidivism and Other Outcomes," (thesis submitted to the Faculty of Graduate and Postdoctoral Affairs in partial fulfillment of the requirements for the degree of Master of Arts in Psychology), Carleton University, Ottawa, Ontario (2018), available at https://curve.carleton.ca/system/files/etd/bf9aa4b2-db91-4815-90fa-c52dbd95ae4f/etd_pdf/c5ec89943c9a0a1c5a25a65ac106dafa/fulham-theeffectivenessofrestorativejusticeprograms.pdf, p.1.

¹³⁸ Lindsay Fulham, "The Effectiveness of Restorative Justice Programs: A Meta-Analysis of Recidivism and Other Outcomes," (thesis submitted to the Faculty of Graduate and Postdoctoral Affairs in partial fulfillment of the requirements for the degree of Master of Arts in Psychology), Carleton University, Ottawa, Ontario (2018), available at https://curve.carleton.ca/system/files/etd/bf9aa4b2-db91-4815-90fa-c52dbd95ae4f/etd_pdf/c5ec89943c9a0a1c5a25a65ac106dafa/fulham-theeffectivenessofrestorativejusticeprograms.pdf, p. 30-31.

procedural justice. Taken together, the results provide moderate support for the efficacy of [restorative justice] programs in reducing recidivism and suggest their potential for improving other outcomes over traditional [criminal justice system] approaches.¹³⁹

While Fulham found a clear correlation between restorative justice and lower rates of recidivism, its assessment was less definitive with regard to costs of the programs themselves. Fulham cautioned against drawing definitive conclusions regarding relative costs.¹⁴⁰ It must be noted here that lower recidivism does, in fact, lower costs to society in terms of reducing the cost of future crimes avoided. Other researchers have found the costs of restorative justice programs to be significantly lower than incarceration (though perhaps not lower than the costs of probation). Assessing research done in New Zealand and elsewhere, the New Zealand Ministry of Justice concluded that restorative justice is cost effective when compared to conventional court processes.¹⁴¹

¹³⁹ Lindsay Fulham, "The Effectiveness of Restorative Justice Programs: A Meta-Analysis of Recidivism and Other Outcomes," (thesis submitted to the Faculty of Graduate and Postdoctoral Affairs in partial fulfillment of the requirements for the degree of Master of Arts in Psychology), Carleton University, Ottawa, Ontario (2018), available at https://curve.carleton.ca/system/files/etd/bf9aa4b2-db91-4815-90fa-c52dbd95ae4f/etd_pdf/c5ec89943c9a0a1c5a25a65ac106dafa/fulham-theeffectivenessofrestorativejusticeprograms.pdf, p. ii.

¹⁴⁰ Lindsay Fulham, "The Effectiveness of Restorative Justice Programs: A Meta-Analysis of Recidivism and Other Outcomes," (thesis submitted to the Faculty of Graduate and Postdoctoral Affairs in partial fulfillment of the requirements for the degree of Master of Arts in Psychology), Carleton University, Ottawa, Ontario (2018), available at https://curve.carleton.ca/system/files/etd/bf9aa4b2-db91-4815-90fa-c52dbd95ae4f/etd_pdf/c5ec89943c9a0a1c5a25a65ac106dafa/fulham-theeffectivenessofrestorativejusticeprograms.pdf, pp. 82-83.

¹⁴¹ UNODC, E4J University Module Series: Crime Prevention and Criminal Justice, Module 8: Restorative Justice, Topic Three--How cost effective is restorative justice? Available at <https://www.unodc.org/e4j/en/crime-prevention-criminal-justice/module-8/key-issues/3--how-cost-effective-is-restorative-justice.html>, last visited Dec. 24, 2020.

V. Historical Criminal Justice Trends and Conditions in the US, the Northeast, and Connecticut

This section provides background on historical trends in criminal justice in the United States. Additionally, we contextualize the recent turn toward decarceration in Connecticut and across the Northeast. First, we survey recent criminal justice reforms in Connecticut that have successfully reduced the prison population while strengthening reentry and resocialization programs. Second, we analyze the annual decrease in both crime and incarceration levels across the Northeast over the last decade.

We find that, on the whole, violent and property crime have consistently decreased over the last decade. Mirroring that trend, prison and jail populations have also steadily decreased across the Northeast since their peak in the early to mid-2000s. These findings underscore the conclusion that decarceration during COVID-19 is not anomalous. Rather, COVID-19 appears to have accelerated pre-existing trends.

A. Mass Incarceration in the United States Over the Last Half-Century

The United States of America incarcerates more people per capita than any other nation in the world.¹⁴² Incarceration rates in the United States soared, beginning in the 1970s and intensifying in the 1980s and 1990s, as a result of a confluence of factors outlined below. In

¹⁴² World Prison Brief, available at https://www.prisonstudies.org/highest-to-lowest/prison_population_rate?field_region_taxonomy_tid=All

1950, a staff of twenty-three thousand guarded all U.S. jails and prisons.¹⁴³ Today, half a million correctional officers are required to perform these same functions.¹⁴⁴ The past half century has witnessed a radical overhaul of prisons in America.

The modern era of mass incarceration took shape in the 1970s, when politicians from both major parties increasingly advocated for punitive policies in response to violent crime across the United States. Public anxieties about perceived criminal behavior by racial and ethnic minorities fueled a “tough-on-crime” policy agenda with disproportionate, grave consequences for less affluent areas and communities of color. Legislators called for strict sentencing guidelines and enforcement measures across all levels of government. The War on Drugs launched by President Richard Nixon in 1971 and implemented at all levels of government for the ensuing decades resulted in millions of Americans arrested and incarcerated for low-level, nonviolent drug offenses. Legal scholar Michelle Alexander has demonstrated in the *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* how these policies have served to disenfranchise and subordinate African Americans. No serious examination of mass incarceration in the United States over the past half-century can fail to assess policies in light of their destructive effects on people of color.

¹⁴³ Tony Platt, *Beyond These Walls: Rethinking Crime and Punishment in the United States* (St. Martin’s Press, New York, 2018), p. 11.

¹⁴⁴ “Correctional Officers,” Bureau of Labor Statistics (2019) available at <https://www.bls.gov/oes/current/oes333012.htm> (placing the figure at 423,000). Tony Platt estimates the figure to be 700,000. Tony Platt, *Beyond These Walls: Rethinking Crime and Punishment in the United States* (St. Martin’s Press, New York, 2018), p. 11.

The staggering explosion of the prison population in the United States during the last half-century occurred mostly at the state level, where the vast majority of the nation's prisoners are housed. In 1970, the combined state and federal prison population was 196,441.¹⁴⁵ By 2008, that figure had climbed to 1.6 million, an increase of over 800% in a country whose population had increased by less than 50% over the same period.¹⁴⁶

Fear of criminality and the exploitation of this fear (often laced with explicit or implicit racism) concentrated on criminal prosecution and imprisonment as the main response not only to violent crime but also to non-violent offenses, particularly the use and distribution of illicit substances. The development of for-profit prisons also served to intensify the turn to prison-as-solution. Before 1980, on a per capita basis, the United States prison population was comparable to that in Europe today, averaging between 60 to 160 incarcerated people per 100,000.¹⁴⁷ This figure continued to rise over the next decade. Between 1980 and 1992 the rate of incarceration in State and Federal prisons more than doubled, from 139 sentenced inmates (inmates serving 1 year or more) per 100,000 U.S. residents to 332 per 100,000.¹⁴⁸ By 2008, the US had nearly doubled its incarceration rate yet again, reaching a combined state and federal

¹⁴⁵ Langan et al 1988 "Historical Statistics on Prisoners in State and Federal Institutions, Yearend 1925-86

¹⁴⁶ See William Sabol *et al* "Prisoners in 2008," Bureau of Justice Statistics, June 2010, available at <https://www.bjs.gov/content/pub/pdf/p08.pdf>

¹⁴⁷ See "A New Approach to Reducing Incarceration While Maintaining Low Rates of Crime," May 2014, the Hamilton Project, (page 3) available at https://www.brookings.edu/wp-content/uploads/2016/06/v5_THP_RaphelStollBrief.pdf, and "Prisoners 1925-1981," Dec. 1982, the Bureau of Justice Statistics, available at <https://www.bjs.gov/content/pub/pdf/p2581.pdf>

¹⁴⁸ "Correctional Populations in the United States," April 1995, Bureau of Justice Statistics, available at <https://www.ncjrs.gov/pdffiles1/Digitization/153849NCJRS.pdf>

prison population of over 600 inmates per 100,000 residents.¹⁴⁹ This firmly cemented the US and the greatest incarcerator per capita in the world. The shift toward mass incarceration continued even as the country registered consistent *decreases* in violent crime, particularly after 1993.¹⁵⁰ Even as violent crime plummeted in the US, long imprisonment terms and policies such as the “three strikes rule” ensured that the prison population ballooned. As we discuss below, Connecticut was, in many ways, one of the earliest states to move away from this trend.

B. Mass Incarceration in the United States Today

Approximately 0.7% of the United States population is currently housed in a federal or state prison or local jail, a staggering high fraction compared to other Western industrialized nations.¹⁵¹ On a single day, state and federal prisons hold 2.3 million people, with another 3.7 million on probation, and 840,000 on parole.¹⁵² This figure makes the United States an international outlier in its reliance on incarceration to respond to crime. By 2018, thirty-one American states had rates of incarceration of 635 per 100,000 residents or more—levels that would place them ahead of every sovereign country in the world. The next most incarcerated

¹⁴⁹ See William Sabol *et al* “Prisoners in 2008,” Bureau of Justice Statistics, June 2010, available at <https://www.bjs.gov/content/pub/pdf/p08.pdf>

¹⁵⁰ See John Gramlich “What the data says (and doesn’t say) about crime in the United States,” *Pew Research*, Nov. 20, 2020, available at <https://www.pewresearch.org/fact-tank/2020/11/20/facts-about-crime-in-the-u-s/>

¹⁵¹ Peter Wagner and Wanda Bertram, “What percent of the U.S. is incarcerated?,” Jan. 16, 2020, the Prison Policy Institute, available at <https://www.prisonpolicy.org/blog/2020/01/16/percent-incarcerated/>

¹⁵² Tony Platt, *Beyond these Walls*, pg. 6.

countries after the US in that year were El Salvador (618), Turkmenistan (583) and Cuba (510).¹⁵³

Over the past five years, there has been significant change in the criminal justice political landscape. Even before the summer 2020 mass rallies and protests over the murder of George Floyd, police abuse, and racist violence, the terms of the debate on criminality and punishment were in flux. In 2015, the Brennan Center organized a publication¹⁵⁴ in which presidential candidates and experts set out their mostly moderate positions on criminal justice reform. The 2015 report was framed by a noncommittal title: “American Leaders Speak Out on Criminal Justice.” Four years later, the Center issued a follow-up publication with a clear agenda: “Ending Mass Incarceration.”¹⁵⁵ Over that period, significant changes had taken place. The New York Times, commenting on the two publications and on the political landscape noted that “if the [2019] report showed one thing, it was this: There is a new bipartisan consensus on criminal

¹⁵³ See Peter Wagner and Wendy Sawyer “States of Incarceration: The Global Context 2018” (2018) the Prison Policy Initiative <https://www.prisonpolicy.org/global/2018.html>

¹⁵⁴ Brennan Center for Justice at New York University School of Law, Solutions: American Leaders Speak Out on Criminal Justice, Edited by Inimai Chettiar and Michael Waldman, Associate Editors, Nicole Fortier and Abigail Finkelman (including essays by President William J. Clinton, Joseph R. Biden, Jr., Cory Booker, Chris Christie, Hillary Rodham Clinton, Ted Cruz, Mike Huckabee, Cathy L. Lanier, Martin O’Malley, Janet Napolitano, Rand Paul, Rick Perry, Marco Rubio, Bryan Stevenson, Scott Walker, James Webb, available at

https://www.brennancenter.org/sites/default/files/publications/Solutions_American_Leaders_Speak_Out.pdf

¹⁵⁵ Brennan Center for Justice, Ending Mass Incarceration: Ideas from Today’s Leaders, Edited by Inimai Chettiar and Priya Raghavan (with essays from Cory Booker, Sherrod Brown, Julián Castro, Ta-Nehisi Coates, Alicia Garza, Kirsten Gillibrand, Kamala Harris, Sherrilyn Ifill, Van Jones, Amy Klobuchar, Jared Kushner, Beto O’Rourke, Rashad Robinson, Sam K. Topeka, Bernie Sanders and Elizabeth Warren). <https://www.brennancenter.org/our-work/policy-solutions/ending-mass-incarceration-ideas-todays-leaders>

justice, and it is that the old consensus was wrong.”¹⁵⁶ In between the two reports, Congress passed the First Step Act, which reduced mandatory sentences and expanded early-release and job programs for formerly incarcerated people. Inimai M. Chettiar, an editor of the 2019 report told *The New York Times*, “Four years later, I think it is a very different landscape, where they are not only committing to ending mass incarceration but also coming forward with far bigger proposals and more specific proposals.”¹⁵⁷

C. Criminal Justice Reform in Connecticut in the 2000s

For the better part of the last two decades, Connecticut has been a leader in the national shift toward decarceration. As COVID-19 continues to strain the criminal justice system, Connecticut again has the opportunity to lead in criminal justice reform. Unlike most states, Connecticut took significant measures to reduce its prison population while increasing oversight and monitoring efforts beginning in the early 2000s. In this section, we highlight a number of these reforms and suggest areas for expansion. These reforms have overwhelmingly been supported by broad coalitions comprising directly affected community members, criminal justice activists, and local and state policymakers from both major parties. As detailed in subsequent sections of this report, Connecticut’s crime and incarceration rates fell drastically shortly after the state adopted these reforms. The current political moment strongly urges a continuation and

¹⁵⁶ Maggie Astor, “Left and Right Agree on Criminal Justice: They Were Both Wrong Before,” *New York Times*, May 16, 2019, available at: <https://www.nytimes.com/2019/05/16/us/politics/criminal-justice-system.html>

¹⁵⁷ *Ibid.*

renewal of bold criminal reforms, as community activists continue to build significant public support and Connecticut lawmakers look to lead nationally through the COVID-19 pandemic. In particular, redirecting funds from the prison system into reentry programs and initiatives supported by directly affected communities may solidify further Connecticut’s position as the leading voice in evidence-based criminal justice reform while helping address financial challenges posed by COVID-19.

Far before its peers, Connecticut began to implement criminal justice reforms—nearly two decades ago. In 2004, the state became the first in the nation to pass a “justice reinvestment” bill with the enactment of Public Act 04-234.¹⁵⁸ This bill streamlined the probation process, decreased the number of people arrested for technical parole violations, and redirected funds into reentry programs.¹⁵⁹ Justice reinvestment is a particularly helpful framework at the current political and financial moment—the state may save money by reducing incarceration and still address public safety by reinvesting funding into reducing recidivism *via* reentry and resocialization programs, both inside and outside of incarceration facilities.

¹⁵⁸ “Justice Reinvestment in Connecticut,” The Council of State Governments, available at <https://csgjusticecenter.org/projects/justice-reinvestment/past-states/connecticut/> (last accessed Dec 21 2020); Public Act 04-234 An Act Concerning Prison Overcrowding Final Implementation Monitoring Project Status Report, Jan 2008, available at https://www.cga.ct.gov/2007/pridata/Studies/PDF/P.A._04-234_Second_Implementation_Report.PDF (last accessed Dec 21 2020).

¹⁵⁹Ibid.

In 2006, Connecticut established the Criminal Justice Policy and Planning Division (CJPPD) within the Office of Policy and Management (OPM).¹⁶⁰ This office has brought more oversight into the state’s criminal justice system while allowing lawmakers to craft policy using evidence-based analysis. Through the CJPPD, the state has been better able to track recidivism rates, the growth and decline of the incarcerated population, drug overdoses, and the use of community supervision.¹⁶¹ As of 2019, the CJPPD has begun to collect and report data related to prosecutorial practices in the state.¹⁶² This is a major development: as this report suggests in earlier sections, even minor changes in prosecutorial policy can lead to major reductions in rates of incarceration.¹⁶³ The bill that enabled the CJPPD to collect these data was passed unanimously in the House and Senate with support from the Connecticut ACLU and other community advocates.¹⁶⁴ This again made the state the first in the country to analyze such data systematically or make prosecutors’ decisions so readily available.¹⁶⁵

Also deriving from the 2006 law that furthered the state’s evidence-based policymaking infrastructure, Connecticut’s Sentencing Commission represents an important move toward

¹⁶⁰ Criminal Justice Policy and Planning Division Main Page, available at <https://portal.ct.gov/OPM/CJ-About/Homepage/CJPPD> (last accessed Dec 21 2020).

¹⁶¹ Ibid.

¹⁶² CJPPD Prosecutor Data Main Page, available at <https://portal.ct.gov/OPM/CJ-About/CJ-SAC/SAC-Sites/Prosecutor-Data-webpage> (last accessed Dec 21 2020).

¹⁶³ Ibid.

¹⁶⁴ See “After Smart Justice Effort, Connecticut Poised To Lead Country With Prosecutor Transparency Law,” Aug. 9 2019, ACLU CT, available at <https://www.acluct.org/en/news/after-smart-justice-effort-connecticut-poised-lead-country-prosecutor-transparency-law>

¹⁶⁵ See “Connecticut will be first state to collect prosecutor data to study racial bias,” June 6, 2019, NBC News, available at <https://www.nbcnews.com/news/us-news/connecticut-will-be-first-state-collect-prosecutor-data-study-racial-n1014416> (last accessed Dec. 23 2020).

independent, data-driven decision-making in the state’s criminal processes. The Commission is an independent body composed of twenty-three individuals representing diverse stakeholders, such as the State’s Attorney’s Office, public defenders, victim advocates, mental health and addiction personnel, and members of the public.¹⁶⁶ Over the last decade, the Commission has considered and advanced important proposals. Most recently, the body has developed a plan not only to recognize the voting rights of incarcerated individuals, but also to facilitate the logistics of elections inside detention centers. The Commission has recently analyzed pretrial procedures and the effectiveness of existing diversionary programs in the state,¹⁶⁷ produced a memorandum on mental health care needs classification in state prisons and proposed new sentence modification procedures.¹⁶⁸ The Commission frequently draws on the expertise of community advocates. As suggested earlier in this report, continued community engagement is a crucial element of criminal justice policymaking and reform.

The “raise the age” initiative, launched by juvenile justice advocates and policymakers and passed into law in 2007, is another example of evidenced-based decision-making resulting in concrete advances in the criminal justice system. This effort sought to align Connecticut with the rest of the country by treating those under the age of 18 as juveniles—employing brain

¹⁶⁶ See the Connecticut Sentencing Commission: <http://ctsentencingcommission.org/>

¹⁶⁷ Report to the Governor and the General Assembly on Pretrial Diversionary Programs, Connecticut Sentencing Commission

¹⁶⁸ Sentence Modification Proposal (Section 53a-39 of the General Statutes), Connecticut Sentencing Commission; Michael Chase, Alex Tsarkov, and F.V. Augur, “Memorandum on Mental Health Care Need Classifications in Connecticut’s Incarcerated Population,” (June 2020), the Connecticut Sentencing Commission, accessible at <http://ctsentencingcommission.org/wp-content/uploads/2020/09/Mental-Health-Memo1.pdf>

science, other data and the humane treatment of youth to guide its recommendations. As a result, between 2009 and 2016 the arrest rates of those under 18 dropped by 56%. Between 2009 and 2017 the levels of incarceration of those under 18 fell by nearly 85%.¹⁶⁹

The state has also launched programs aimed at reducing recidivism and easing reentry post-incarceration. In 2015, Connecticut became one of the states accepted into the Second Chance Pell pilot program, thus affording those incarcerated a greater likelihood to access post-secondary education and increasing their likelihood for successful reintegration once released. With full restoration of the Pell program provided through the recently passed federal stimulus bill, there is now a greater opportunity to expand this opportunity throughout Connecticut's incarcerated population.¹⁷⁰

The TRUE program, which draws on insights from cognitive science and clinical psychology, targets youth at high-risk for recidivism.¹⁷¹ The program focuses on skills training and behavioral therapy to provide participants with a more robust set of options post-release. This

¹⁶⁹ I. Kuzyk, I. Baudoin, and K. Bobula. "Juvenile Detention in CT," (April 2018), CT OPM CJPD, available at <https://portal.ct.gov/-/media/OPM/CJPPD/CjAbout/SAC-Documents-from-2008-2017/JUVFACTFACTSHEETfinalpdf.pdf>

¹⁷⁰ Kelan Lyons, "Books behind bars: Pilot Pell Grant program helps inmates look toward the future," Jan. 24 2020, *CT Mirror*, available at <https://ctmirror.org/2020/01/24/books-behind-bars-pilot-pell-grant-program-helps-inmates-look-toward-the-future/> (last accessed Dec 30 2020); Erica Green, "Financial Aid is Restored for Prisoners as Part of the Stimulus Bill," Dec. 21, 2020, *The New York Times*, available at <https://www.nytimes.com/2020/12/21/us/politics/stimulus-law-education.html> (last accessed Dec 30, 2020).

¹⁷¹ See Maurice Chammah, "The Connecticut Experiment," May 8, 2018, available at <https://www.themarshallproject.org/2018/05/08/the-connecticut-experiment> (last accessed Dec 23 2020)

program was developed in close collaboration with the Vera Institute for Justice, and moreover, incorporated international norms and best practices from programs in Germany, Norway, and elsewhere (some of which are discussed in later sections of this report).¹⁷² Further developing individually tailored programs premised on equity and international norms could continue to generate more effective justice system outcomes, as well as boost Connecticut’s profile as a national leader on these issues.

Recently, the state has also piloted a Medication-Assisted Treatment (MAT) program in its prisons. This program ensures that incarcerated people with substance-abuse disorders, primarily opioids, receive medical treatment for their opioid abuse. As detailed in Section V of this report, substitution therapy like MAT is considered one of the best available treatments for individuals with substance abuse disorder, and it is widely available in countries such as Germany. The program began in 2018 and is expected to grow.¹⁷³ The program was budgeted two million dollars in 2020 and six million dollars in 2021 in an effort to expand the program throughout the state.¹⁷⁴ A bill was proposed to expand access to the program to prisoners in Connecticut within four years, but that bill did not reach a vote in either chamber of the

¹⁷² For example, the TRUE program has adopted the philosophy of “dynamic security,” which aims to reorient the relationship between correctional officers and incarcerated individuals. See §V of this report.

¹⁷³ “Two YLS Students Help Secure Funding for CT Drug Prison Treatment Program,” *YLS Today*, Jan 14 2020, accessible at <https://law.yale.edu/yls-today/news/two-yls-students-help-secure-funding-ct-drug-prison-treatment-program> (last accessed Dec 30 2020).

¹⁷⁴ Lisa Backus, “Funding to help CT prisons improve opioid addiction treatment program,” July 3 2019, *The Middletown Press*, accessible at <https://www.middletownpress.com/middletown/article/Funding-to-help-CT-prisons-improve-opioid-14069347.php> (last accessed Dec 30 2020).

legislature.¹⁷⁵ Programs like MAT respect human rights while remaining highly cost-effective. The Washington State Institute for Public Policy estimates that some MAT programs may yield returns between \$1.80 and \$2.30 for every dollar invested.¹⁷⁶ As suggested in section IV, the expansion of MAT may result in both short- and long-term benefits for the state’s criminal justice system.

Finally, the state’s 2018 Reentry Strategy offers a program template that can be adopted and expanded across the state through continued justice reinvestment.¹⁷⁷ This initiative is particularly notable in its inclusion of directly-affected communities and criminal justice advocates.¹⁷⁸ Through a number of roundtables that brought together those affected by prison reentry, the Connecticut Reentry Collaborative was formed.¹⁷⁹ As the state considers expanding formal reentry programs in, for example, New Haven, the participation of the Collaborative and other citizen groups will be key to building sustainable and effective programs. In 2018, the Collaborative proposed several growth areas for reentry programs across the state, including significant investment in housing and employment opportunities for those leaving prisons.¹⁸⁰ As Connecticut looks towards a renewed commitment to justice reinvestment, reentry programs

¹⁷⁵ Ibid.

¹⁷⁶ “Benefit Cost Analysis,” Washington State Institute for Public Policy, Dec. 2019, accessible at <https://www.wsipp.wa.gov/BenefitCost?topicId=7> (last accessed Dec, 30 2020).

¹⁷⁷ *Planning for Successful Re-entry*, Dec. 2018, The Connecticut Reentry Collaborative

¹⁷⁸ Ibid.

¹⁷⁹ Ibid.

¹⁸⁰ Ibid.

built in close collaboration with directly affected communities may be a particularly important place to begin.

This section highlights only some of the major advances Connecticut has made in decarceration since the turn of the twenty-first century. The state's commitment to evidence-based reform, independent monitoring, and justice reinvestment has often led other states to look to Connecticut as a model for meaningful reform. Still, there remains significant room to grow. As the United States progresses through the COVID-19 pandemic, states will require more leadership, not less. As the previous sections of this report argue, Connecticut should reaffirm its commitment to decarceration while following international human rights norms and involving directly affected individuals, community activists, and advocates in all its processes. Through bodies like the Sentencing Commission and the Office of Policy Management, the state possesses the infrastructure to increase transparency and public involvement in the criminal justice system. Community groups have long supported diversion from the prison pipeline, and a diverse array of stakeholders have come together to improve reentry in the state. The Connecticut Black Lives Matter protests and rallies throughout 2020 demonstrated public support for decarceration and justice reform. Now, with COVID-19, budget pressure will require change within the state. Thus, the question is not whether Connecticut will change its criminal justice system moving forward, but how it will do so — by continuing expensive policies guided by the failed logic of mass incarceration, or by an intensification of the state's reformist trajectory guided by public input, international guidelines, and strong evidence?

D. Trends in Crime and Detention in the US, Connecticut, and the Northeast

This section outlines major trends in crime and incarceration rates in the United States, with a focus on Connecticut and the Northeast region.¹⁸¹ Our review of crime and incarceration data collected between 2011 and 2020 demonstrates that both serious crime and incarceration have decreased steadily over the past decade. In other words, decarceration in Connecticut has been a long-term process accelerated by COVID-19. As a result, serious crime and felony incarceration will be at their lowest levels in over a decade as the pandemic subsides.

National and State Trends in Crime Incidence, 2010-2020

In the last decade, Connecticut has experienced a significant reduction in reports of violent and property crime. This change mirrors a similar trend at the regional and national level. Every year, the FBI releases a Unified Crime Report (“UCR”) which aggregates crime data from over 18,000 local, state, and federal law enforcement agencies.^{182,183} The UCR measures the number of criminal reports filed for serious violent or property crimes. For the purposes of the UCR, violent crimes are: murder and nonnegligent manslaughter, aggravated assault, rape, arson and robbery. Property crimes are defined to include: larceny theft, motor vehicle theft, burglary,

¹⁸¹ In this paper, we consider the Northeast region to include the following states, data from which are analyzed below: Pennsylvania, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, New Hampshire, Vermont and Maine. This follows the definition used in the FBI’s UCR reports.

¹⁸² Uniform Crime Reporting, available at <https://www.fbi.gov/services/cjis/ucr> (last accessed Dec. 23 2020).

¹⁸³ UCR data are given in reported crimes per 100,000 residents.

and arson.¹⁸⁴ Reports of “index crimes” refer to the combined reports of property and violent crimes.

Reports of index crime, violent crime, and property crime are down nationally from their 2010 levels.¹⁸⁵ Nationally, index crime has fallen every year since at least 2010, from about 3,350.5 index crimes per 100,000 people in 2010 to 2,489.3 index crimes per 100,000 people in 2019 (see Figure 8). This represents a 25.7% decrease in reports of index crime nationwide over a decade. Separately, reports of violent crime and property crime are also down from their 2010 levels. Violent crime has fallen 6.2% since 2010, while property crime has fallen 28.4% over that same period.¹⁸⁶ It is worth noting that property crime represents the vast majority of index crime nationwide. In 2019, nearly 85% of all crime reported in the UCR was property-related.¹⁸⁷ Only 15% were violent crimes. Figure 8 and Figure 9 depict the national trends in index crime between 2010 and 2019.

¹⁸⁴“What type of crime data does the CDE represent?” <https://crime-data-explorer.app.cloud.gov/about#faq>

¹⁸⁵ FBI Crime Data Explorer App, available at <https://crime-data-explorer.app.cloud.gov/explorer/national/united-states/crime> (last accessed Dec. 17, 2020).

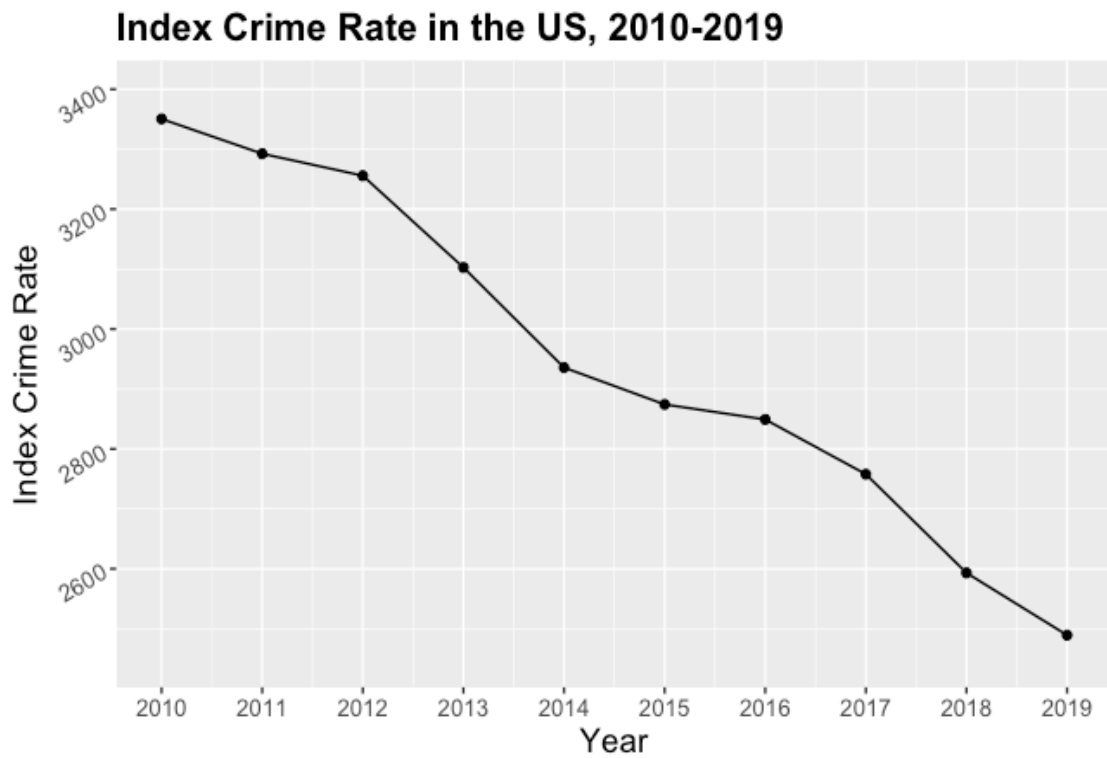
¹⁸⁶ Ibid.

¹⁸⁷ Ibid.

Figure 8: Index Crime Rate in the US 2010-2019 (table)¹⁸⁸

Year	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Index Crime Rate	3,350.5	3,292.5	3,255.8	3,102.7	2,935.7	2,874.2	2,849.1	2,757.8	2,593.2	2,489.3
Percent Change from Previous Year		-1.7%	-1.1%	-4.7%	-5.4%	-2.1%	-1.0%	-3.2%	-6.0%	-4.0%

Figure 9: Index Crime Rate in the US, 2010-2019



¹⁸⁸Crime Data Explorer “Connecticut” available at <https://crime-data-explorer.app.cloud.gov/explorer/state/connecticut/crime> (last accessed Dec 23 2020).

As of the publication of this report, the complete 2020 UCR was not yet available. Preliminary UCR data from January through June 2020 suggest, however, that overall violent crime and property crime are down relative to their 2019 levels, especially in the Northeast.¹⁸⁹ The significant exception to this trend is found in murders and nonnegligent homicides, which are up from 2019. A preprint study from researchers at the University of California, Davis suggests that the observed increase in gun violence may be related to a sharp increase in firearm sales that occurred in the early months of 2020.¹⁹⁰ Further studies find strong correlations between unemployment, food insecurity, and gun violence in the US.¹⁹¹ COVID-19 has led to significant increases in unemployment and food insecurity across the US, especially in urban areas.¹⁹² Thus, it is plausible that the economic and social effects of COVID-19 may also explain this uncharacteristic spike in homicides. Despite the atypical increase in murders — which still

¹⁸⁹ “Overview of Preliminary Uniform Crime Report, January–June, 2020,” Sept. 15, 2020, FBI, available at <https://www.fbi.gov/news/pressrel/press-releases/overview-of-preliminary-uniform-crime-report-january-june-2020>

¹⁹⁰ Julia Schleimer *et al*, “Firearm Purchasing and Firearm Violence in the First Months of the Coronavirus Pandemic in the United States,” July 11, 2020, *MedRxiv* available at <https://www.medrxiv.org/content/10.1101/2020.07.02.20145508v2>; ¹⁹⁰See also: Phillip Levine and Robin McKnight, “Three million more guns: The Spring 2020 spike in firearm sales,” July 13 2020, The Brookings Institute, available at <https://www.brookings.edu/blog/up-front/2020/07/13/three-million-more-guns-the-spring-2020-spike-in-firearm-sales/>

¹⁹¹ See A.R. Pah *et al*, “Economic insecurity and the rise in gun violence at US schools,” Jan. 30, 2017, *Nature Human Behavior*, available at <https://www.nature.com/articles/s41562-016-0040>. See Randi Smith *et al*, “Food Insecurity Predicts Urban Gun Violence,” Aug. 11, 2020, *The American Surgeon*, available at <https://journals.sagepub.com/doi/abs/10.1177/0003134820942194>

¹⁹² See “Tracking the COVID-19 Recession’s Effects on Food, Housing, and Employment Hardships,” Center for Budget and Policy Priorities, available at <https://www.cbpp.org/research/poverty-and-inequality/tracking-the-covid-19-recessions-effects-on-food-housing-and> (last accessed Dec. 18, 2020). See Lauren Bauer “Hungry at Thanksgiving: A Fall 2020 update on food insecurity in the U.S.” Nov. 23 2020, Brookings Institute, available at <https://www.brookings.edu/blog/up-front/2020/11/23/hungry-at-thanksgiving-a-fall-2020-update-on-food-insecurity-in-the-u-s/> (last accessed Dec 17, 2020).

remain a very small portion of overall crimes — the nation’s trend toward a reduction in serious crime appears to have continued through the pandemic.

The reduction in crime registered in Connecticut is more significant than the national trend over the last decade. Figure 10, Figure 11, and Figure 12 show Connecticut’s UCR crime rates and their annual percentage change from 2010-2019.¹⁹³ The data suggest a statewide reduction in both violent crime and property crime, with the greatest reduction occurring between 2018 and 2019. The index crime rate, violent crime rate, and property crime rate in Connecticut all fell over 34.8% between 2010 and 2019 — significantly larger decreases than those registered at the national level for each measure (See Figures 8 and 10). These trends have been extremely consistent: In Connecticut, the rate of property crime has fallen every year from 2010 through 2019, and the index crime rate in the state has fallen all but once since 2010 (See Figure 10).

Figure 10: Index Crime Rate in CT 2010-2019 ¹⁹⁴

Year	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Index Crime Rate	2,470.8	2,428.2	2,432.0	2,242.4	2,167.0	2,051.7	2,036.0	2,010.1	1,871.5	1,609.6
Percent Change from Previous Year		-1.7%	0.2%	-7.8%	-3.4%	-5.3%	-0.8%	-1.3%	-6.9%	-14%

¹⁹³Crime Data Explorer “Connecticut” available at <https://crime-data-explorer.app.cloud.gov/explorer/state/connecticut/crime> (last accessed Dec 23 2020).

¹⁹⁴ Ibid.

Figure 11: Violent Crime Rate in CT 2010-2019 ¹⁹⁵

Year	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Index Crime Rate	282.0	275.7	283.5	262.2	238.5	221.4	227.7	229.2	209.6	183.6
Percent Change from Previous Year		-2.2%	2.8%	-7.5%	-9.0%	-7.2%	2.8%	0.7%	-8.6%	-12.4%

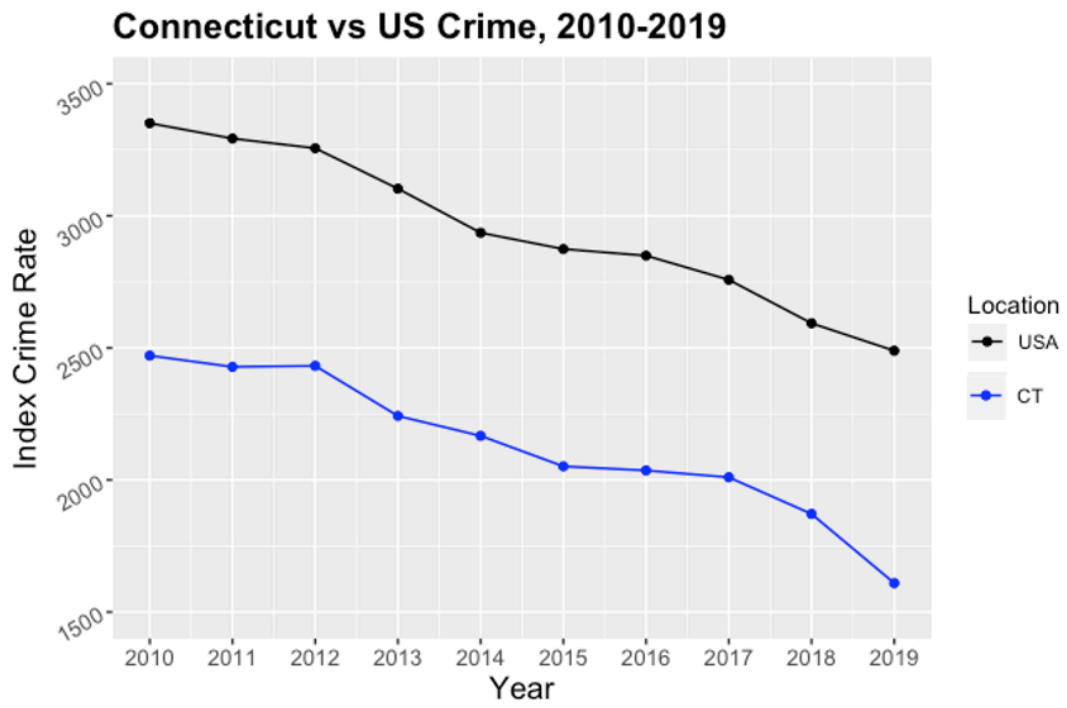
Figure 12: Property Crime Rate in CT 2010-2019 ¹⁹⁶

Year	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Index Crime Rate	2,188.8	2,152.5	2,148.5	1,980.2	1,928.5	1,830.3	1,808.3	1,780.9	1,661.9	1,426.0
Percent Change from Previous Year		-1.7%	-0.2%	-7.8%	-2.6%	-5.1%	-1.2%	-1.5%	-6.7%	-14.2%

¹⁹⁵ Ibid.

¹⁹⁶ Ibid.

Figure 13 – CT vs US Crime, 2010-2019



While Connecticut is a leader regionally, its neighboring states have also seen significant reductions in crime since 2010. In fact, every Northeastern state has experienced a similar reduction in index crime during this period: Maine¹⁹⁷, Massachusetts¹⁹⁸, New Hampshire¹⁹⁹, New Jersey²⁰⁰, New York²⁰¹, Pennsylvania²⁰², Rhode Island²⁰³, and Vermont²⁰⁴ all saw decreases in index crime that outpaced the national trend. Over the same period, each of the states experienced a significant reduction in property crime, and all but Vermont experienced a significant reduction in violent crime (see Figure 12). While Vermont has experienced rising violent crime since 2010, it still reports some of the lowest absolute numbers of violent crimes in the nation. Some victim advocates in the state have attributed the rise in reported violent crime to improved reporting systems and higher standards for victim services.²⁰⁵ The FBI's preliminary 2020 UCR data for the Northeast region suggest that this trend has continued into

¹⁹⁷ Crime Data Explorer: "Maine"

<https://crime-data-explorer.app.cloud.gov/explorer/state/maine/crime>

¹⁹⁸ Crime Data Explorer: "Massachusetts" <https://crime-data-explorer.app.cloud.gov/explorer/state/massachusetts/crime>

<https://crime-data-explorer.app.cloud.gov/explorer/state/massachusetts/crime>

¹⁹⁹ Crime Data Explorer: "New Hampshire" <https://crime-data-explorer.app.cloud.gov/explorer/state/new-hampshire/crime>

<https://crime-data-explorer.app.cloud.gov/explorer/state/new-hampshire/crime>

²⁰⁰ Crime Data Explorer: "New Jersey" <https://crime-data-explorer.app.cloud.gov/explorer/state/new-jersey/crime>

²⁰¹ Crime Data Explorer: "New York" <https://crime-data-explorer.app.cloud.gov/explorer/state/new-york/crime>

²⁰² Crime Data Explorer: "Pennsylvania" <https://crime-data-explorer.app.cloud.gov/explorer/state/pennsylvania/crime>

<https://crime-data-explorer.app.cloud.gov/explorer/state/pennsylvania/crime>

²⁰³ Crime Data Explorer: "Rhode Island" <https://crime-data-explorer.app.cloud.gov/explorer/state/rhode-island/crime>

<https://crime-data-explorer.app.cloud.gov/explorer/state/rhode-island/crime>

²⁰⁴ Crime Data Explorer: "Vermont" <https://crime-data-explorer.app.cloud.gov/explorer/state/vermont/crime>

²⁰⁵ See Erin Petenko, "FBI: Crime in Vermont is dropping, but rape reports are rising," Oct. 1 2019,

<https://vtdigger.org/2019/10/01/fbi-crime-in-vermont-is-dropping-but-rape-reports-are-rising/>

2020. FBI data through June 2020 estimate that both violent and property crime in the Northeast declined about 5% between 2019 and 2020.²⁰⁶

Figure 14: Change in Index Crime Rate for Northeast States, 2010-2019²⁰⁷

State	2010 Index Crime Rate	2019 Index Crime Rate	Percent Change between 2010-2019
CT	2,470.8	1,609.6	-34.9%
ME	2,600.7	1,360.8	-47.7%
MA	2,825.7	1,507.4	-46.7%
NY	2,352.2	1,731.9	-26.4%
NH	2,387.2	1,361.7	-43.0%
NJ	2,387.6	1,542.6	-35.4%
PA	2,539.6	1,709.8	-32.7%
RI	2,818.8	1,755.9	-37.8%
VT	2,393.3	1,626.6	-32.0%

²⁰⁶ “Overview of Preliminary Uniform Crime Report, January–June, 2020,” Sept. 15, 2020, FBI, available at <https://www.fbi.gov/news/pressrel/press-releases/overview-of-preliminary-uniform-crime-report-january-june-2020>

²⁰⁷ Data from Figure 10

Figure 15: Change in Violent Crime Rate for Northeast States, 2010-2019²⁰⁸

State	2010 Index Crime Rate	2019 Index Crime Rate	Percent Change between 2010-2019
CT	282	183.6	-34.9%
ME	122.1	115.2	-5.7%
MA	468.9	327.6	-30.1%
NY	394.4	358.6	-9.1%
NJ	307.5	206.9	-32.7%
NH	167.4	152.5	-8.9%
PA	366.5	306.4	-16.4%
RI	257.4	221.1	-14.1%
VT	131	202.2	+54.4%

Figure 16: Change in Property Crime Rate for Northeast States, 2010-2019²⁰⁹

State	2010 Index Crime Rate	2019 Index Crime Rate	Percent Change between 2010-2019
CT	2,188.8	1426	-34.9%
ME	2,478.6	1,245.6	-49.7%
MA	2,356.8	1,179.8	-49.9%
NH	2,219.8	1,209.2	-45.5%
NJ	2,080.1	1,335.7	-35.8%
NY	1,957.8	1,373.3	-29.9%
PA	2,173.1	1,403.4	-35.4%
RI	2,561.4	1,534.8	-40.1%
VT	2,262.3	1,424.4	-37.0%

²⁰⁸ Data from Figure 11

²⁰⁹ Data from Figure 12

Figure 17: Index Crime by State, 2010-2019

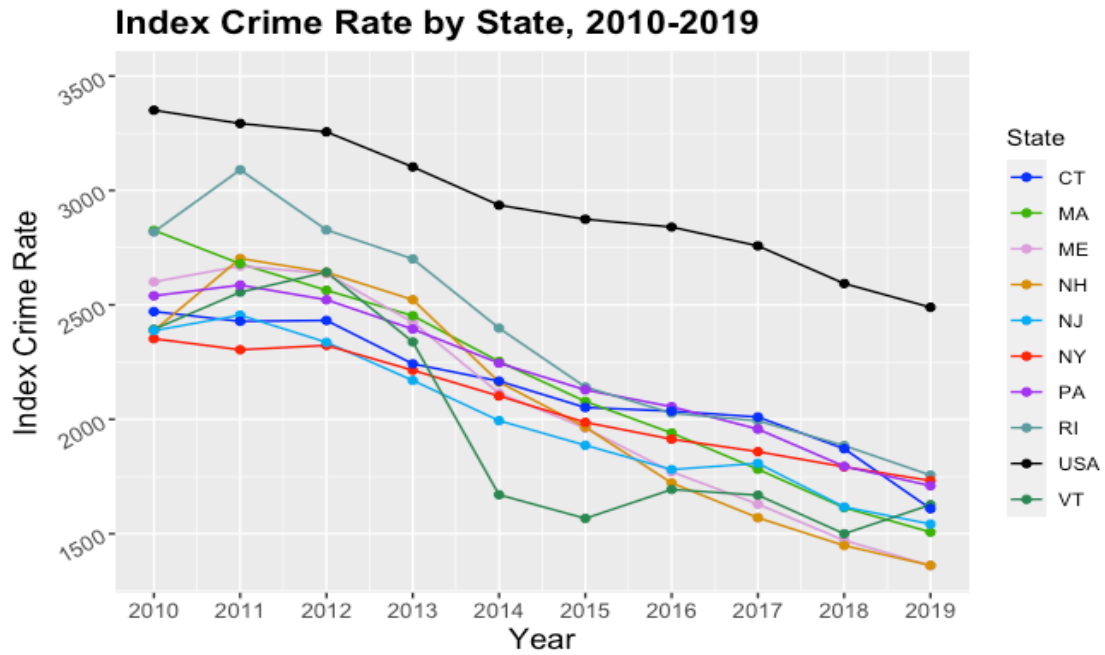
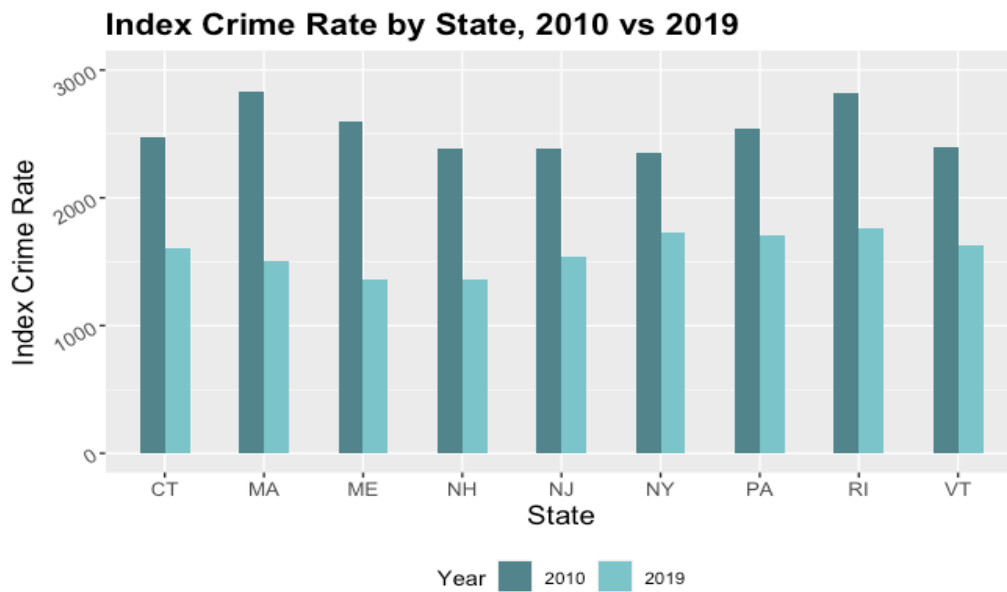


Figure 18: Index Crime Rate by State, 2010 vs 2019



These trends suggest that serious crimes, including violent and property crimes, have fallen markedly in Connecticut, in the Northeast, and across the nation. As serious crime continues to fall, lawmakers should expect fewer arrests, fewer indictments, and ultimately fewer detainees in state correctional facilities. The reduction in the number of those incarcerated should prompt reevaluation of investments in this sector, including, but not limited to, closure of correctional facilities reduced staffing of detention centers. These changes will entail significant savings in state expenditures in corrections. They could—and we believe should—lead to restructuring of investments in public security that direct funding *away* from incarceration and *towards* programs that focus on crime prevention and reentry for those incarcerated.

Incarceration

As crime has decreased in Connecticut, so too has the state's rate of incarceration. Since 2011, both state correctional facilities and county jails have reduced the number of inmates they house by significant margins. These decreases come in the wake of significant policy reform and continued grassroots criminal justice activism in the state.²¹⁰ Connecticut's neighboring states in the Northeast have also seen reductions in incarceration over the same period. While temporary measures due to COVID-19 have accelerated these trends, decarceration has

²¹⁰ See This report "Criminal Justice Reform in Connecticut in the 2000s". For examples of ongoing activism, see also Tatiana Flowers, Dec 21 2020, *The Middletown Press* "Racial justice activists: 'a fight for society to be humane'" <https://www.middletownpress.com/middletown/article/Activists-for-racial-progress-a-fight-for-15817748.php> and Kelan Lyons and Kasturi Pananjady, Dec 23 2020, "COVID-19 leads to more 'discretionary releases' from prison, but advocates say it's not enough" <https://ctmirror.org/2020/12/23/covid-19-leads-to-more-discretionary-releases-from-prison-but-advocates-say-its-not-enough/>

occurred in the region for nearly a decade. Below, we highlight yearly reductions in incarceration in Connecticut and in the Northeast region, and then consider monthly reductions over the course of 2020. These latter decreases resulted from the COVID-19 pandemic. Crucially, the reduction in incarceration in Connecticut follows logically from reductions in rates of crime illustrated above.

The number of people housed in Connecticut’s correctional facilities and county jails has decreased significantly and consistently since 2011 (Figure 12).²¹¹ On January 1, 2011, there were 17,746 detainees in Connecticut Department of Correction (“DOC”) facilities. By January 1, 2020, this number had fallen to 12,284. This represents a 30.8% decrease in the incarcerated population over nine years, or an average annual reduction of 3.4% a year. The rate of decarceration was relatively consistent between 2011 and 2020. The prison population fell in every period except during the year 2013 (January 1, 2013 - December 31, 2013). Three of the four years with the largest reductions in the prison population occurred in the last four years. These trends become more pronounced in the sentenced prison population (Figure 14). The number of those incarcerated post-sentencing fell over 34.5% between 1/1/2011 and 1/1/2020. Likewise, this decrease has been consistent—this population fell in eight of the last nine years. The population of those awaiting sentencing in the state’s prisons remained

²¹¹Connecticut Correctional Facility Population Counts, available at https://cjis-dashboard.ct.gov/CJPPD_REPORTS/rdPage.aspx?rdReport=Connecticut_Correctional_Facility_Population_Data_Report_Menu (last accessed Dec 17 2020).

relatively constant between 2011 and 2019. Between January 1, 2019 and January 1, 2020, the number of those incarcerated without sentences fell from 3,956 to 3,393, approximately 14%. This reduction may be largely attributable to criminal justice reforms that went into effect in the state in early 2019. While prison populations across the nation have been decreasing since their peak around 2009, Connecticut has greatly outperformed the national trend during this period.²¹²

Figure 19: Annual Change in Total CT Prison Population, Jan. 2011– Jan. 2020²¹³

Year	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Population ²¹⁴	17,746	17,022	16,347	16,594	16,167	15,500	14,532	13,649	13,228	12,284
Percent Change from Previous Year	***	-4.1%	-4.0%	1.5%	-2.6%	-4.1%	-6.2%	-6.1%	-3.1%	-7.1%

²¹² See “U.S. Prison Population Trends: Massive Buildup and Modest Decline”, Sept. 2019, The Sentencing Project, available at <https://www.sentencingproject.org/wp-content/uploads/2019/09/U.S.-Prison-Population-Trends.pdf>

²¹³ Connecticut Correctional Facility Population Counts, available at https://cjis-dashboard.ct.gov/CJPPD_REPORTS/rdPage.aspx?rdReport=Connecticut_Correctional_Facility_Population_Data_Export_Menu (last accessed Dec 17 2020).

²¹⁴ Population measured on January 1 of each year.

Figure 20: Annual Change in Total CT Prison Population, Jan. 2011 – Jan. 2020

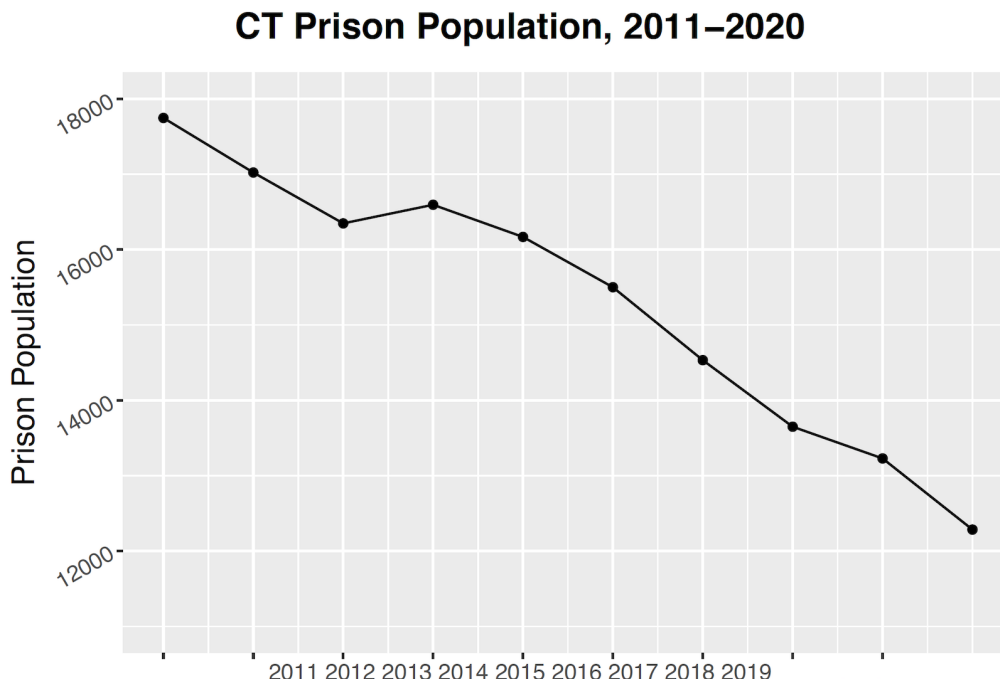


Figure 21: Change in CT Population of Individuals Post-Sentencing, Jan. 2011–Jan 2020²¹⁵

Year	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Population²¹⁶	13,578	12,955	12,110	12,420	12,068	11,603	10,749	9,871	9,272	8,891
Percent Change from Previous Year	***	-4.6%	-6.5%	2.6%	-2.8%	-3.9%	-7.4%	-8.2%	-6.1%	-4.1%

²¹⁵Connecticut Correctional Facility Population Counts, available at [https://cjis-dashboard.ct.gov/CJPPD_REPORTS/rdPage.aspx?rdReport=Connecticut Correctional Facility Population Data Export Menu](https://cjis-dashboard.ct.gov/CJPPD_REPORTS/rdPage.aspx?rdReport=Connecticut_Correctional_Facility_Population_Data_Export_Menu) (last accessed Dec 17 2020).

²¹⁶ Population measured on January 1 of each year.

Massachusetts, New Jersey, New York, and Rhode Island all saw reductions in their prison populations of over 15% between 2011 and the beginning of 2020. Pennsylvania and New Hampshire saw reductions in prison population of 5.5% and 7.8%, respectively. Maine is the only state in the region whose prison population has consistently risen between 2011 and the beginning of 2020. The Council of State Governments attributes some of this rise to Maine’s “war on drugs” approach.²¹⁷ Indeed, data show that drug trafficking charges in the state have nearly doubled since 2008.²¹⁸ The table below demonstrates the annual absolute and percentage change in prison population in each Northeastern state.

Note: In the following figures, we consider the number of individuals housed in state DOC facilities in each jurisdiction — what we call “prison population.” It is important to note that one cannot make valid comparisons between or among states as they are listed in these figures. ***Connecticut and Rhode Island have unified jail and prison systems while the other states considered have separate jail and prison systems. Therefore, states with unified systems will appear to over-incarcerate relative to their peers; states with dual systems will appear to under-incarcerate relative to their peers.*** Massachusetts, for example, incarcerates more people than Connecticut does; however, because Connecticut includes those in jails in

²¹⁷ <https://csgjusticecenter.org/publications/justice-reinvestment-in-maine-second-presentation/>

²¹⁸ *Ibid.*

prison population and Massachusetts does not, it would (incorrectly) appear from the chart below that Connecticut's prisons population is higher than its more populous neighbor.

Crucially, this report does not attempt to make comparisons between and among states, their prison populations, or their incarceration rates. Instead, we aim to show that COVID-19 has led to a significant and consistent decrease in the number of individuals incarcerated across the Northeast Region. That is, the point of interest for this report is the relative decrease in those housed in state facilities, and not to compare between and among states.

Figure 22a: Annual Prison Population (dual systems), Northeastern States 2011–2020^{219,220}

State	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
ME Prison Pop.	1,757	1,703	1,698	1,853	1,837	1,798	2,215	2,344	2,368	2,176
% change		-3.07%	-0.29%	9.13%	-0.86%	-2.12%	23.19%	5.82%	1.02%	-8.11%
MA Prison Pop.	9,985	10,251	9,877	9,453	9,337	8,630	8,234	8,062	7,725	7,319
% change		2.66%	-3.65%	-4.29%	-1.23%	-7.57%	-4.59%	-2.09%	-4.18%	-5.26%
NH Prison Pop.	2,476	2,563	2,799	2,910	2,756	2,631	2,715	2,698	2,515	2,283
% change		3.51%	9.21%	3.97%	-5.29%	-4.54%	3.19%	-0.63%	-6.78%	-9.22%
NJ Prison Pop.	17,407	16,867	16,433	15,672	15,193	14,396	13,972	14,018	13,897	13,799
% change		-3.10%	-2.57%	-4.63%	-3.06%	-5.25%	-2.95%	0.33%	-0.86%	-0.71%
NY Prison Pop.	57,229	55,979	54,865	54,142	53,103	52,344	51,466	50,271	47,459	44,344
% change		-2.18%	-1.99%	-1.32%	-1.92%	-1.43%	-1.68%	-2.32%	-5.59%	-6.56%
PA Prison Pop.	48,521	50,104	50,686	50,647	49,851	48,923	48,767	47,237	47,004	45,870
% change		3.26%	1.16%	-0.08%	-1.57%	-1.86%	-0.32%	-3.14%	-0.49%	-2.41%

²¹⁹ This figure only depicts prison population. CT and RI have a unified prison system, so this figure accounts for both their jail and prison numbers. The remaining states have separate jail and prison systems, so their incarceration rates appear lower in this figure than they are in reality. Direct comparisons between unified and separate systems are not valid for this reason. See pp. 19 for a longer explanation.

²²⁰ ME: Average daily population in January under DoC custody. Obtained via public records request.

MA: Population under DoC custody on Jan 1 of each year: <https://www.mass.gov/doc/prison-population-trends-2019/download>

NH: Population under DoC custody on June 30 of each year.

<https://www.nh.gov/nhdcc/population.html>

NJ: Population under DoC custody on January 1 of each year.

<https://www.state.nj.us/corrections/pages/OffenderInformation.html>

NY: Population under DoC custody on Dec 31 of previous year.

<https://doccs.ny.gov/system/files/documents/2020/11/doccs-fact-sheet-november-2020.pdf>

PA: Population under DoC custody on Dec 31 of previous year

<https://www.cor.pa.gov/About%20Us/Statistics/Pages/Monthly-Population-Reports.aspx>

Figure 22b: Annual Jail and Prison Population (unified systems), Northeastern States 2011–2020²²¹

State	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
CT Prison Pop.	17746	17022	16347	16594	16167	15500	14532	13649	13228	12284
% change		-4.08%	-3.97%	1.51%	-2.57%	-4.13%	-6.25%	-6.08%	-3.08%	-7.14%
RI Prison Pop.	3225	3190	3172	3198	3141	3019	2871	2723	2631	NA
% change		-1.09%	-0.56%	0.82%	-1.78%	-3.88%	-4.90%	-5.15%	-3.38%	NA

Figure 23a: Change in Prison Population (dual systems), Northeastern States, 2011-2020²²²

State	Prison Population at Beginning of 2011	Prison Population at Beginning of 2020	Percent Change
ME	1757	2176	23.9%
MA	9,985	7,319	-26.7%
NH	2,476	2,283	-7.8%
NJ	17407	13799	-20.7%
NY	57229	44344	-22.5%
PA	48,521	45,870	-5.5%

²²¹ CT: Count of total population under DoC custody on Jan 1 of each year. [https://cjis-dashboard.ct.gov/CJPPD_REPORTS/rdPage.aspx?rdReport=Connecticut Correctional Facility Population Data Export Menu](https://cjis-dashboard.ct.gov/CJPPD_REPORTS/rdPage.aspx?rdReport=Connecticut_Correctional_Facility_Population_Data_Export_Menu)

RI: Average yearly count under DoC custody.

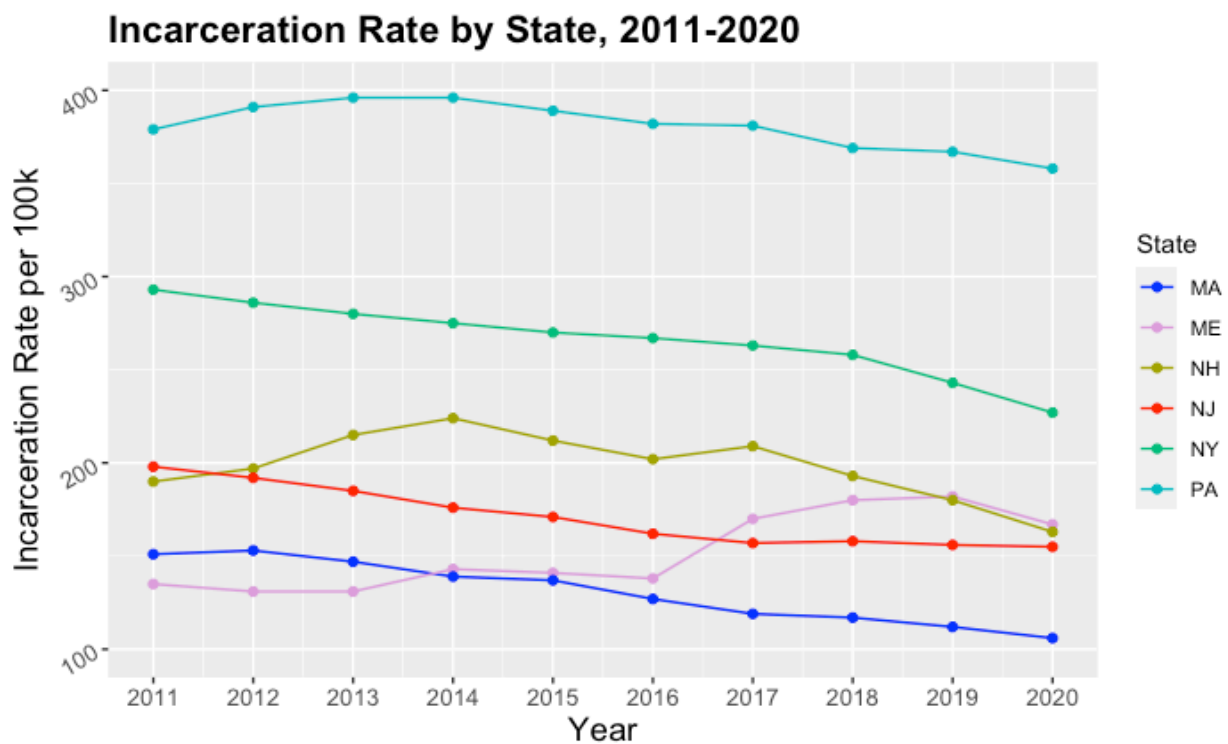
<https://www.cor.pa.gov/About%20Us/Statistics/Pages/Monthly-Population-Reports.aspx>

²²² Data is the same as in Figure 22.

Figure 23b: Change in Jail and Prison Population (unified systems), Northeastern States, 2011-2020²²³

State	Prison Population at Beginning of 2011	Prison Population at Beginning of 2020	Percent Change
CT	17746	12284	-30.8%
RI	3225	2631 ²²⁴	-18.4%

Figure 24a Annual Change in Incarceration Rate (dual systems only) by State through Jan. 2020²²⁵



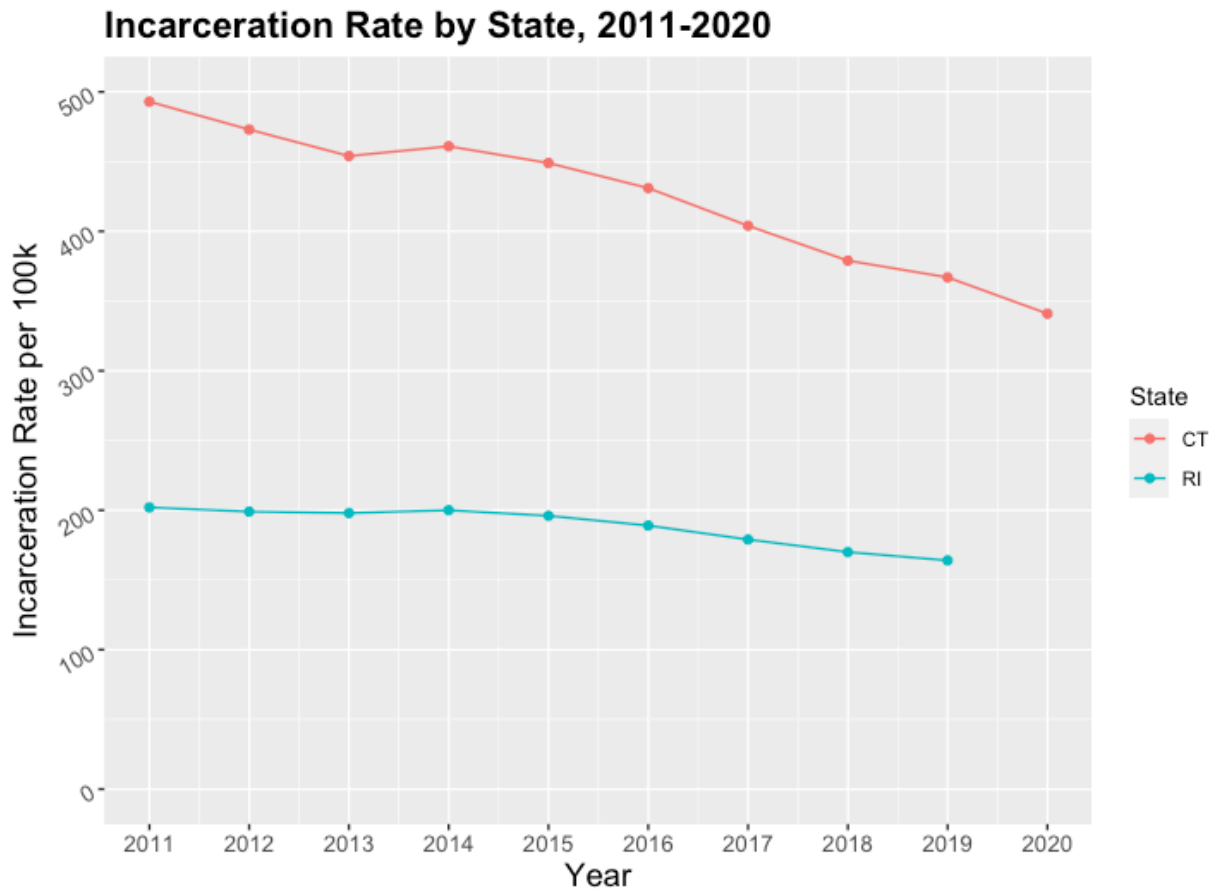
²²³ Data is the same as in Figure 22.

²²⁴ Average 2019 population

²²⁵ Data is the same as figure 22. Rates calculated by using (number of people incarcerated / census pop. estimate) in that year.

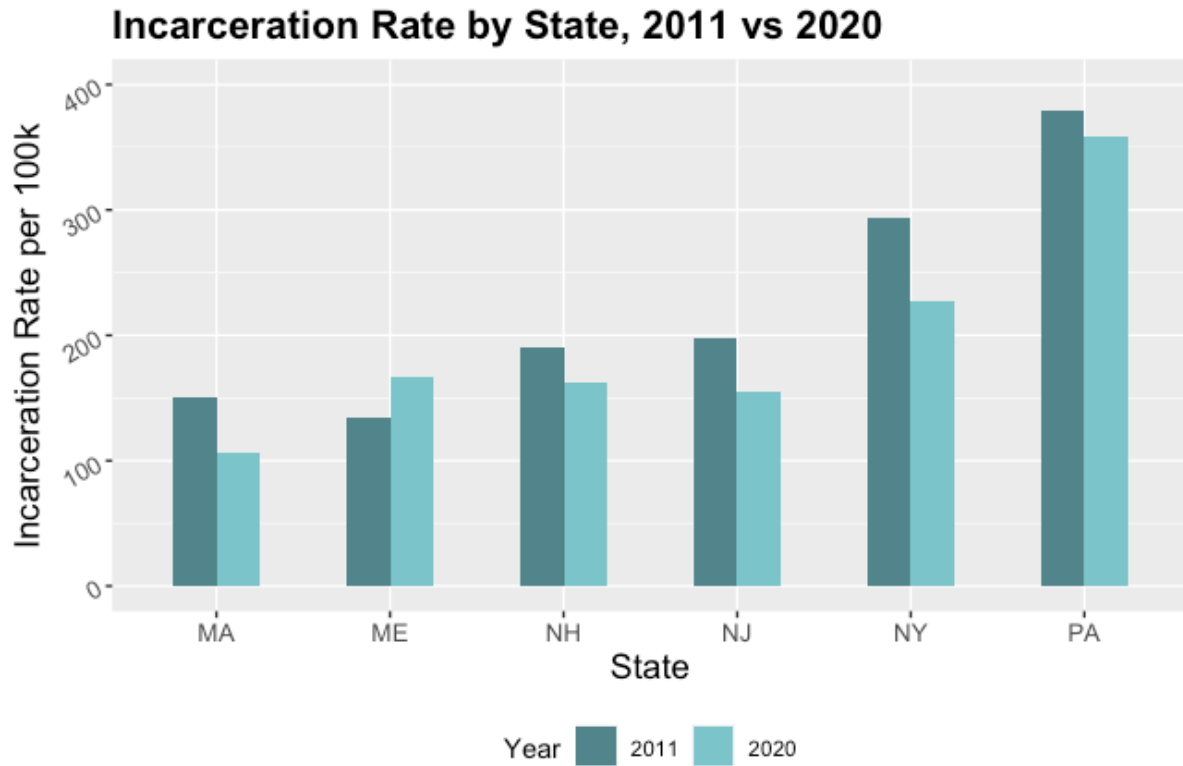
Figure 24b Annual Change in Incarceration Rate (unified systems only) by State through Jan.

2020²²⁶



²²⁶ Data is the same as figure 22. Rates calculated by using (number of people incarcerated / census pop. estimate) in that year.

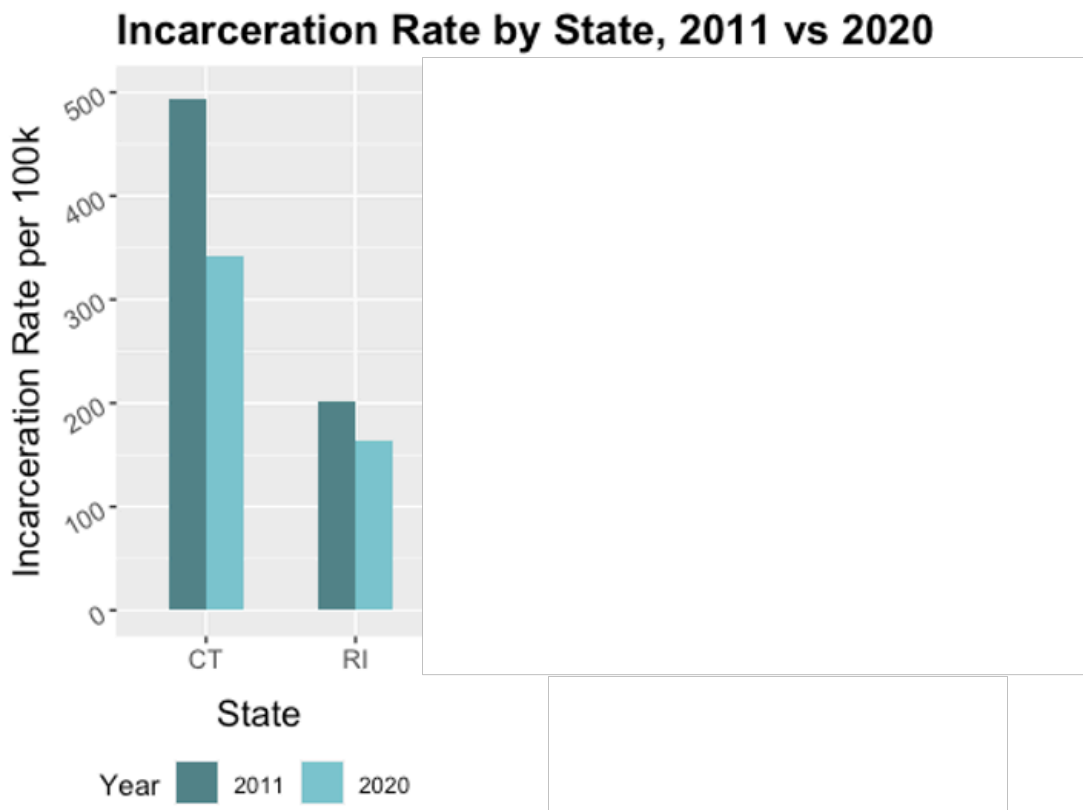
Figure 25a: Comparison in Incarceration Rate (Prisons only; dual systems), 2011 vs. 2020²²⁷



²²⁷ Same data as figure 22. This figure only depicts prison population. CT and RI are omitted from this figure because they run unified prison systems. See pp. 19 for a longer explanation.

Figure 25b: Comparison in Incarceration Rate (Jail and Prisons; unified systems), 2011 vs.

2020²²⁸



²²⁸ Same data as figure 22.