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COMMENTARY

A 'Propitious Moment' For Reform

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By Marc Mauer

The release this week of the [report](http://www.nap.edu/openbook.php?record_id=18613) (http://www.nap.edu/openbook.php?record_id=18613) by the National Research Council (NRC) on the causes and consequences of American imprisonment marks a watershed moment.

By bringing together leading scholars and practitioners, the Council has produced the most comprehensive assessment to date of what we have learned from the four-decade "experiment" in mass incarceration.

The findings are sobering.

In examining the growth trends leading to 2.2 million people behind bars, the report's authors conclude that "the United States has gone past the point where the numbers of people in prison can be justified by social benefits."

It adds: "high rates of incarceration themselves constitute a source of injustice."

We are now well past the point of diminishing returns in crime control, but also far down the road of producing detrimental consequences for individuals and families in high-incarceration neighborhoods.

The report comes at a propitious moment, as sentencing reform proposals are gaining significant traction at both the federal and state levels.

Congress may soon vote on two significant pieces of reform legislation that have cleared the Senate Judiciary Committee. One would scale back the severity of mandatory drug penalties and the other would shorten sentences for participants in rehabilitative programming in federal prisons.

At the state level, a reconsideration of sentencing and imprisonment policies has been underway for a decade. Since 2000, 29 states have enacted reforms to their mandatory sentencing policies; probation and parole agencies are implementing procedures to reduce the number of technical revocations to prison; and policymakers are increasingly exploring evidence-based approaches to reducing recidivism.

As a result, the unrelenting expansion of the prison population has finally leveled off, with modest declines each year since 2010.

But as the NRC report argues, given the scale of the problem we need to develop a much more expansive agenda for policy and program change than we've seen to date.

Two areas in particular stand out:

Drug Policy Reform

The shift in the political climate on drug policy is quite clear at this point. Growing public support for treatment initiatives, the vast expansion of drug courts, and the scaling back of mandatory sentencing laws all stand in contrast to the "drug war" mentality of the 1980s and 1990s.



Inmates at Orleans Parish Prison (Photo by Editor B, via Flickr)

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Despite these changes, the scale of drug offender incarceration remains at a near-record high, with only modest declines in recent years.

In order to achieve more substantial reductions of drug offenders in prison, state and local policymakers need to address three areas of decision-making.

First, what level of drug arrests constitutes an appropriate public safety strategy, and should drug law enforcement target specific communities?

Large-scale arrests of users and small-time sellers consume substantial law enforcement resources with little demonstrated impact on the drug trade. And focusing enforcement on low-income communities of color strains police resources—both material and social—at the cost of addressing other crimes in those neighborhoods.

Second, while drug courts have demonstrated some success in reducing levels of substance abuse and crime, their impact on diversion from prison has been quite modest.

Much of this relates to the restrictive criteria for admission in many such courts, which often screen out those individuals facing a prison term.

Third, while the movement to reconsider mandatory sentencing has been promising, far too many such penalties remain in place, contributing to unnecessary and excessive incarceration.

Long-term Sentences

Largely unaddressed in federal and state efforts to control prison growth has been the rising population of long-term prisoners.

Today, one of every nine persons in prison—160,000 inmates—is serving a life sentence. Thousands of additional offenders are serving “virtual” life sentences, with prison terms of 50 years or more.

Most of these individuals have committed serious crimes, often at a relatively young age. Harsh sentencing and parole policies have all but eliminated the possibility of parole in many cases, which in turn has become an increasingly significant obstacle to substantial prison population reduction.

Yet given what we know about how most offenders “age out” of crime, and that longer prison sentences are a key driver of mass incarceration, we need to reconsider the use of enormous financial resources for incarcerating an increasingly geriatric prison population.

While the overall reduction in the prison population has been quite modest, three states point the way to more substantial change.

Over the past decade California, New Jersey, and New York have all reduced their populations by 25%.

This has been accomplished through a mix of reducing the number of lower-level drug and property offenders in prison, creating alternative supervision mechanisms for parole violators, and reconsidering the scale of drug prosecutions. There has been little significant opposition to these changes or adverse effects on crime rates in these states.

This experience only reaffirms the NRC findings that policies, not crime rates, largely shape the American prison population.

EDITORS NOTE: for additional coverage of the report, please see TCR's May 1, 2014 story, "[Choice: Cut Prison Population, Or Accept New Normal](http://www.thecrimereport.org/news/inside-criminal-justice/2014-04-incarceration--embarqued) (<http://www.thecrimereport.org/news/inside-criminal-justice/2014-04-incarceration--embarqued>)"

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