

Reducing Incarceration Rates in the United States: Successful Methods in Five States

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*for the
Urban Research and Resource Center*

THE URBAN RESEARCH AND RESOURCE CENTER (URRC)
at Texas Southern University

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TSU President Austin A. Lane built upon the historical vision of Dr. Granville Sawyer, former president of Texas Southern, and provided leadership to institute the URRC. The Center was established by a group of people who recognize the role of the University in making Houston and the country a better place for all its citizens. Dr. Lane was joined by Dr. Michael Adams – Barbara Jordan Mickey Leland School of Public Affairs (SOPA); Distinguished Professor James Douglas – Thurgood Marshall School of Law (TMSL) and president of the board of directors of the Earl Carl Institute for Legal and Social Policy, Inc. (ECD); Professor Carroll Robinson, Esq. (SOPA); Professor Marcia Johnson – TMSL; and Lockett Anthony Johnson – executive director, Karnak, Inc.

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INTRODUCTION

Mass incarceration in the United States must be decreased and the URRC in partnership with the ACLU-TX is working to that end. This paper is part of the research used to develop the evidence pertinent to the problem. In this part of the discussion, I will look at what can be done to decrease mass incarceration in the United States by looking closely at some American states that have reported success at decreasing their incarcerated populations.

We begin by acknowledging the following facts, while the United States represents only 5% of the world's population, it accounts for 22% of the world's prison population. According to the Bureau of Justice Statistics, there are currently 2,121,600 million

Americans are incarcerated, and about 7 million people are under correctional control, which includes prison and parole. China's prison population is currently the second highest in the world 1.6 million inmates and Brazil comes in third with a prison population of 682,901 inmates. As of July 2018, 655 out of every 100,000 citizens are in the United States are incarcerated.¹ 46 percent of the prison population are drug offenders. In comparison, Cuba's incarceration rate is currently 510 per every 100,000 and Russia's incarceration rate is 415 per every 100,000 citizens².

This article identifies some of the successful ways, measures, policies states have used to reduce incarceration. The main focus will be

¹ *Highest – Lowest, Prison Population Total*, World Prison Brief, http://www.prisonstudies.org/highest-to-lowest/prison-population-total?field_region_taxonomy_tid=All.

² German Lopez, *Some good news: America's incarceration rate is at two-decade low*, Vox, <https://www.vox.com/policy-and-politics/2018/5/4/17318790/mass-incarceration-rate-prison-drop>.

on a state level because more than 80% of the incarcerated population are in state institutions, although the article will also address measures that federal authorities have employed to decrease incarceration.

South Carolina, New Jersey, New York, and Texas, have each been successful in dropping their incarceration rates by at least 25% over the past decade by using programs and methods discussed herein.

SOUTH CAROLINA

South Carolina effectively reduced their incarceration rates by 14% since 2010³ and has managed to maintain that level. The state also has the 4th lowest recidivism rate in the country. South Carolina's prison population

reduced to 20,498 in 2017 from 21,290 in 2016 and 21,431 in 2015⁴.

One of the key ways the state managed to reduce incarceration was by enacting the Omnibus Crime Reduction and Sentencing Reform Act in 2010 (S. 1154)⁵. The Act was created to protect public safety, reduce recidivism, and control the state's spending on correction facilities and programs through sentencing restructuring. The act restructured the crime degrees for various crimes like assault, arson, and burglary. As a result of the sentence restructuring more first-time offenders have been placed on probation, community service or drug counselling programs as opposed to being incarcerated. Through this program the state was able to

³ *Data Trends: South Carolina Criminal Justice Reform*, PEW Trusts, <http://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2017/09/data-trends-south-carolina-criminal-justice-reform#0-prison-population-reduced>

⁴ *Inmate Population Summary*, South Carolina Department of Corrections,

http://www.doc.sc.gov/research/SystemOverview/yearlycomparisonofinmatesandbedcounts_081518.pdf

⁵ *South Carolina's Public Safety Reform*, The PEW Center on the States (June 2010), http://www.pewtrusts.org/~media/assets/2010/06/10/pspp_south_carolina_brief.pdf?_ga=1.90778586.1149243849.1489431524

close down 6 prisons and has saved its tax payers about \$491 million⁶.

The South Carolina legislature established the Sentencing Reform Commission in 2008 to assess sentencing and parole practices and introduce effective solutions. Some of the issues the commission addressed were reducing prison population, reducing recidivism rate, and improving public safety in South Carolina. The commission was able to identify 4 key groups of prisoners that accounted for a large number of arrested and imprisonment.

Offenders with sentences less than 2 years, accounted for 44% of the prison population in 2009⁷. Under the reforms, prisoners who otherwise would have been given short prison terms are instead being sentenced to probation or other non-prison alternatives

like shock incarceration, or community supervision, if they were first or second-time offenders.

Offenders with non-violent charges made up 49% of the prison population in 2009, and as of 2016 they are now 34%⁸. As with short-term sentence offenders, after reform, non-violent offenders are placed in incarceration alternatives such a probation, drug treatment programs, counselling and vocational programs. Certain offenders with first or second drug offenses, other than drug trafficking, were given suspended sentences, good conduct credit or work release. There was also an effort to equalize penalties for drug offenses to reduce the disparity between crack and powder cocaine crimes because historically crack cocaine offenses carried longer sentences⁹. Non-violent offenders

⁶ *Data Trends: South Carolina Criminal Justice Reform*, PEW Trusts.

⁷ *South Carolina's Public Safety Reform*, The PEW Center on States.

⁸ *Id.*

⁹ Tim Smith, *Inmates Older than 60 Could Get Parole Under New Plan to Ease Prison Crowding*, Greenville News (April 2018), <https://www.greenvilleonline.com/story/news/local/south-carolina/2018/04/07/inmates-older-than-60->

with longer sentences were now eligible for work release during the last three years of their sentence.

1. Offenders that were incarcerated for probation/parole revocation accounted for 24% of the prison population in 2009¹⁰. Low-risk probation/parole violators were placed on administrative supervision provided that they fulfilled all of the conditions of their supervision. Probation and parole services are allowed to impose administrative sanctions like verbal or written reprimands, non-profit work hours, public-service employment hours, or home visits, instead of revocation¹¹.

2. Before the creation of the Omnibus Act offenders were being deemed ineligible for parole at a high rate and the parole board only approved 27% of all application in 2000. The parole board explained that their reason for rarely granting parole was because they feared liability if they made mistake¹². Now offenders with at least two years sentences were placed on supervised release 180 days before their original release date. Terminally ill inmates are also allowed to petition for parole.¹³

NEW JERSEY

There are currently 19,453 people in the New Jersey criminal justice system¹⁴, down from 19,619 in 2017 reflecting a more than 38%

could-get-parole-under-new-plan-ease-prison-crowding/491374002/

¹⁰ *South Carolina's Public Safety Reform*, The PEW Center on States.

¹¹ Elizabeth Pelletier et al, *Assessing the Impact of South Carolina's Parole and Probation Reforms*, Urban Institute (April 2017) https://www.urban.org/sites/default/files/publication/89871/south_carolina_jri_policy_assessment_final_1.pdf

¹² Tim Smith, *Inmates Older than 60 Could Get Parole Under New Plan to Ease Prison Crowding*

¹³ *Id.*

¹⁴ Colleen O'dea, *Where New Jersey's Prison Population is Shrinking Fastest*, NJ Spotlight, (July 2018), <http://www.njspotlight.com/stories/18/07/19/interactive-map-where-new-jerseys-prison-population-is-shrinking-fastest/>

decrease from the 1999 peak rate of 31,493 inmates¹⁵. The state is currently experiencing the largest incarceration decline in the nation¹⁶. Crimes like drug offenses, robbery, assault, and property crimes have all seen drastic reductions and law arrest rates.

Majority of the reduced incarceration rates has been linked to parole reform¹⁷. The state managed to divert people charged with technical violations into workshops. By creating diversion programs instead of imprisonment, prison returns were reduced by almost 50%.

38.7% of the state's offenders were arrested/imprisoned for violating drug laws, therefore drug law reform was a high priority.

In 2010 Governor Jon Corzine signed a bill

that eliminated the 3-year mandatory minimum penalty for drug distribution in school zones¹⁸. The bill was created to counter the effects of the 1987 Drug Free School Zone law which disparately effected minorities in the state because most of them lived in close proximity of schools¹⁹.

There was also the creation of mandatory drug courts for non-violent offenders. Former Governor Chris Christie introduced his 5 year-plan that would cover 21 counties in the state²⁰. It moved people from prison into productive drug treatment programs like a medical marijuana treatment program for inmates with opioid addictions. In 2017, the state introduced their first prison focused primarily on drug treatment program in Mid-State Correctional Facility²¹. The state also

¹⁵ Ted Sherman, *Why is the N.J. Prison population shrinking? (It's not just about less crime...)*, New Jersey Real-Time News. (September 2017) https://www.nj.com/news/index.ssf/2017/09/why_is_the_nj_prison_population_shrinking_its_not.html

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Colleen O'Dea, *Where New Jersey's Prison Population is Shrinking Fast.*

¹⁹ *Id.*

²⁰ Ted Sherman, *Why is the N.J. Prison population shrinking? (It's not just about less crime...)*,

²¹ Lilo H. Stainton, *State Poised to Open First 'Rehab Prison' at Mid-State Correctional Facility*, NJ Spotlight (April 2017),

introduced a substance abuse program of female inmates at Edna Mahan Correctional Facility for Women²².

New Jersey has created more reentry and transition programs for newly released inmates²³. The Essex County Reentry Pilot Program offers a Staying Connected initiative that provides for education, employment, housing, and health care for recently released inmates. There are other post-release programs provided by New Jersey Reentry Corporation to help with any socioeconomic issues released inmates may face in their communities such a post release employment, Medicaid registration and

health care access, and re-issuing of motor vehicle licenses.

NEW YORK

New York State has experienced record level decreases in their incarceration and recidivism rates²⁴. With the national average being about 716 inmates per 100,000 population, New York accounts for 443 per 100,000 population²⁵. In 2016, there were approximately 88,000 people imprisoned and 146,000 under parole and probation supervision in New York.²⁶

In the 1970s, following a heroin epidemic in New York, then Governor Rockefeller joined President Richard Nixon's war on drugs²⁷. In 1973 Governor Rockefeller introduced new

<http://www.njspotlight.com/stories/17/04/10/state-poised-to-open-first-rehab-prison-at-mid-state-correctional-facility/>

²² Ted Sherman, *Why is the N.J. Prison population shrinking? (It's not just about less crime...)*,

²³ Colleen O'dea, *Where New Jersey's Prison Population is Shrinking Fastest*,

²⁴ James Austin & Michael P. Jacobson, *How New York City Reduced Mass Incarceration*, Brennan Center for Justice (January 2013),

<http://www.brennancenter.org/sites/default/files/publi>

cations/How_NYC_Reduced_Mass_Incarceration.pdf

²⁵ *New York Profile*, Prison Policy Initiative.

<https://www.prisonpolicy.org/profiles/NY.html>

²⁶ *Id.*

²⁷ Brian Mann, *The Drug Laws That Changed How We Punish- The Legacy and Future of Mass Incarceration*, NPR (February 2013), <https://www.npr.org/2013/02/14/171822608/the-drug-laws-that-changed-how-we-punish>

drug laws that would give drug dealers 15 years to life without the possibility of parole²⁸. The new law also applied to drug addicts, and for citizens arrested with small amounts of recreational drugs like marijuana and cocaine. The creation of the law also led to some other problems, like the majority of the citizens being arrested and sentenced under this new law were African-American or Hispanic, but majority of the actual drug users in New York were Caucasian²⁹. This was then followed by NYPD's response to the crack-cocaine crisis in 1985 through their Tactical Narcotics Team, which led to another boom in drug arrests and imprisonment. By 1994 one-third of the state's prison population were non-violent

drug offenders, and 90 percent of the offenders were people of color³⁰.

By 2000, the Drug Policy Alliance was formed to review and change the harsh sentencing standards for laws in New York, such as Rockefeller's Drug Law³¹. In 1999, the New York Police Department shifted their focus from drug arrests due to public backlash on their 'War On Drugs' initiative³². In 2009, the Rockefeller Drug Law was revised to remove the mandatory minimum sentences for drug offenses. This reform, along with other legislative acts, led to a decrease in drug arrests and in 2015 there was a 66 percent decrease in incarceration from New York City alone³³. Recently, former NY police commissioner spoke of the arrests/incarceration policies of NY and

²⁸ *Id.*

²⁹ *Id.*

³⁰ Judith A. Greene & Vincent Schiraldi, *Better by Half: The New York City Story of Winning Large-Scale Decarceration while Increasing Public Safety*, Vera Institute of Justice,

https://justicestrategies.net/sites/default/files/publications/BBHFINALGreeneSchiraldipub_1.pdf

³¹ *Id.*

³² *Id.*

³³ *Id.*

declared them to be racist. Find that information and include in your paper.

From 1996 to 2012, New York State's prison population fell by 31%³⁴. This decrease was due to reform in the state's sentencing and parole laws³⁵.

One of the ways New York addressed drug violations was by implementing certain programs like the Drug Treatment Alternative to Incarceration programs for offenders with prior felony drug convictions³⁶. Instead of being imprisoned these offenders were sent to treatment programs. Non-drug offenders were also put in educational or vocational programs as opposed to prison. The program led to a decrease in imprisonment rates for felony

drug offenders, participants of the program were 36% less likely to be reconvicted and 67% less likely to return to prison after 2 years compared to offenders that did not participate in DTAP³⁷. As of 2007, only 11 percent of felony drug cases resulted in imprisonment, as opposed to 21 percent in 1997³⁸.

Another method used by New York was shock incarceration for offenders 23 and under. In 2007, it was reported that after the shock incarceration program, 80 percent of participants earned their GED and 92 percent of parolees were passing drug tests³⁹. It was reported that the early releases that stemmed from this program saved New York taxpayers about \$1.498 billion⁴⁰.

³⁴ Judith A. Greene & Vincent Schiraldi, *Better by Half: The New York City Story of Winning Large-Scale Decarceration while Increasing Public Safety*

³⁵ *Id.*

³⁶ *Program Profile: Drug Treatment Alternative to Prison*. National Institute of Justice. <https://www.crimesolutions.gov/ProgramDetails.aspx?ID=89>

³⁷ Judith A. Greene & Vincent Schiraldi, *Better by Half: The New York City Story of Winning Large-Scale Decarceration while Increasing Public Safety*

³⁸ Judith A. Greene & Vincent Schiraldi, *Better by Half: The New York City Story of Winning Large-Scale Decarceration while Increasing Public Safety*

³⁹ *Id.*

⁴⁰ *Id.*

New York Governor Andrew Cuomo has made criminal justice reform top priority. He specifically wants to reduce recidivism, improve re-entry experience and eliminate the stigma of criminality. Since Governor Cuomo's election in 2011, New York has closed 24 prisons and juvenile detention centers⁴¹. The governor has also been able to reduce the New York prison population by more than 6,000⁴². He recently proposed a 4-part reform package that will be part of the state's 2019 fiscal budget. The highlights of the reform package are⁴³:

- i: The governor plans to remove the ban that prevents people with criminal convictions from qualifying for occupational licenses.
- ii: Expansion of release opportunities for compliant inmates. Inmates that complete certain programs success will be eligible for merit release.

iii: Creation of a geriatric parole provision where inmates over 55 who have served at least half of their sentence might be eligible for parole. This initiative was created to reduce the amount of money spent on assisting older inmates.

iv: Elimination of parole supervision fees and adjusting child support orders for inmates to reflect their current financial status. There is also a review of revocation guidelines, to allow incarceration alternatives for technical probation violations.

Governor Cuomo has also created a Work for Success re-entry program for released inmates and through this program 20,000 prisoners have been able to find work after release⁴⁴.

In 2014, Governor Cuomo introduced an education program and awarded more than \$7 million in grants towards it. The goal of the program is increase the number of college and post-graduate programs available to

⁴¹ Governor Cuomo Announces Comprehensive Reforms to Improve the Re-entry Process for Formerly Incarcerated Individuals, The Official Website of New York States, <https://www.governor.ny.gov/news/governor-cuomo-announces-comprehensive-reforms-improve-re-entry-process-formerly-incarcerated>

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Jesse McKinley, Cuomo to Give Colleges \$7 Million for Courses in Prison, The New York Times (August 2017), <https://www.nytimes.com/2017/08/06/nyregion/cuomo-to-give-colleges-7-million-for-courses-in-prisons.html>

inmates. The program will also be offering classes from NYU, Mercy College and the Ivy League college Cornell. Community colleges in the state will also participate in the program. The program kicked off in September 2017 and is only available to inmates with five years or less remaining on their sentences. So far, only 17 prisons are participating the program, but the numbers are expected to increase over the years.

TEXAS

Texas has had a reputation as being tough on crime and conservative in its incarceration policies⁴⁵. The state's prison population is the fifth highest in the country and is almost triple some states in America. In 2016, Texas was reported to have 163,703 inmates in both

state and federal prisons and has an incarceration rate of 450 per every 100,000 residents. There are currently more than 70,000 inmates released from Texas prisons every year; about 200 inmates per day. Approximately 4.7 million Texas residents have a criminal record⁴⁶. For the 2018 and 2019 fiscal year, Governor Abbott has requested a 4% Criminal Justice budget reduction⁴⁷. Despite the state's incarceration record, Texas is currently experiencing its lowest crime rate since 1967, closed 8 prisons in the last 7 years and launched criminal justice reform measures⁴⁸.

Texas's incarceration reform began with former Governor Rick Perry's efforts to

⁴⁵ Jerome Greener, Texas Has Led on Prison Reform, But We Have More to do, The Texas Tribune (April 2018), <https://www.tribtalk.org/2018/04/06/texas-has-led-on-prison-reform-but-we-have-more-to-do/>

⁴⁶ Bill Hammond, Conservatives Should Lead Texas Criminal Justice Reform, Texas Smart on Crime Coalition (May 2018), <https://www.caller.com/story/opinion/2018/05/03/conservatives-should-lead-texas-criminal-justice-reform/578617002/>

⁴⁷ Cameron Langford, Texas Looks to Fix Prison Overcrowding, Courthouse New (November 2016), <https://www.courthousenews.com/texas-looks-to-fix-prison-overcrowding/>

⁴⁸ Marc Levin, More Criminal Justice Reform for Texas in 2018, Houston Chronicle (January 2018), <https://www.houstonchronicle.com/opinion/outlook/article/Levin-More-criminal-justice-reform-for-Texas-in-12499603.php>

increase prison alternatives and reform for drug offenses.

In 2007, former Governor Perry expanded drug courts, family courts, and veterans' courts in more counties. There was also an increase in diversion programs for non-violent drug offenders to help treat drug and alcohol addiction. Pre-trial diversion programs have been created in Texas to provide alcohol and drug abuse treatment for first time offenders. The diversion program is offered as an alternative to jail. There is also a Phoenix Court diversion program in Travis County, created to help men and women get out of prostitution and related crimes⁴⁹. Harris County also introduced a Misdemeanor Marijuana Diversion Program in March 2017. The MMDP is a program

where the referred offenders are required to complete a 4-hour "Cognitive Decision Making" class within 90 days⁵⁰.

In 2015, the Second Chances law (SB 1902) was enacted that allowed nonviolent misdemeanor offenders to have their records sealed. This law was updated in 2017 to include first-DWI offenders and is retroactively applied to seal if the individuals have no prior DWI's, a Blood Alcohol Content level of less than .14, completed a 6-month interlock ignition program or have not had a DWI in 5 years, and have paid court fines⁵¹.

In September 2017, Governor Greg Abbott introduced more legislation to reduce the state's incarceration and crime rates⁵². Senate Bill 1914 and House Bill 351 were created to

⁴⁹ Jacquelyn Powell, Phoenix Court Program Cutting Down on Prostitution in Travis County, KXAN Austin (August 2018), <https://www.kxan.com/news/local/austin/phoenix-court-program-cutting-down-on-prostitution-in-travis-co/1383936638>

⁵⁰ Misdemeanor Marijuana Diversion Program, Harris County District Attorney, <https://app.dao.hctx.net/sites/default/files/2017-03/MMDPOverview.pdf>

⁵¹ Marc Levin, More Criminal Justice Reform for Texas in 2018

⁵² *Id.*

provide jail alternatives for offenders with class C misdemeanors and traffic violations. The bills also allow for courts to offer payment plans and community service alternative and also match fines to the offender's personal income. Senate Bill 1849 was enacted to allow for inmates with mental illness or substance abuse problems to be sent to treatment facilities instead of prison.⁵³ The bill requires officers to take training courses on general de-escalation tactics and mental health de-escalation tactics. The bill also requires officers to notify a magistrate of offenders with mental illness within 12 hours of arrest. Under the bill officers are also required to take offenders suffering with mental illness or substance abuse issues to a diversion program, if one is available in the agency's jurisdiction⁵⁴.

CONCLUSION

⁵³ *Id.*

⁵⁴ Julie Anderson, Senate Bill 1849 Breaking Down the Sandra Bland Act – 85th Legislature, The Texas

New Jersey, New York, South Carolina, and Texas have made positive changes in reducing their incarceration rates. One of the methods that seem to make the most impact is altering sentencing standards for non-violent offenses, specifically drug offenses. These starts are working to undo the damage done by harsh drug laws implemented decades ago. Through an increase in retroactive sentence reductions, prison alternatives, and pretrial and post-trial diversion programs for drug offenders, the country should continue to experience a decrease in their incarceration rates.

Another way to reduce incarceration rates is to continue improving prison alternatives for technical parole violations. By creating community service, home detention, and restitution options, the state will spend less money housing inmates and use it on more

County Progress (December 2017), <https://countyprogress.com/senate-bill-1849-breaking-down-the-sandra-bland-act-85th-legislature/>

Urban Research & Resource Center

productive programs. Funding should also be used to create education and housing programs for newly released inmates. Inmates are often found back in prison because they cannot find a legal means of sustaining themselves once released. States like Texas and New York are beginning to provide college level courses for inmates to help them find reasonable jobs for inmates. States should provide education programs centered around booming industries like the tech field.