In this essay, we revisit the original idea of justice reinvestment to assess its relevance to today’s policy reform environment in the U.S. penal system. We demonstrate that the direction the justice reinvestment work has taken has not mattered much in reducing mass incarceration. Overall, states that have undertaken formal Justice Reinvestment Initiatives (JRI) are not different in their incarceration trajectories than non-JRI states. Overall, there has been little or no “savings” to be reinvested, and money set aside for reinvestment has largely gone to strengthen government agencies of social control rather than community capacity for safety. The originators of the justice reinvestment idea would find it hard to recognize what has taken place under that rubric.

Despite this, we firmly believe that the time has never been better for JRI. Politically, the stars are aligned today such that JRI could offer a common ground for major changes in the penal system. Experience with penal reform, both under the JRI rationale and otherwise, provides invaluable lessons about what can work and what will not work in reducing the size of the prison population.

Our aim is to offer yet another critical assessment of justice reinvestment in practice. We fully recognize the important contributions made by those who have advanced the justice reinvestment agenda in the United States and elsewhere. We acknowledge the trailblazing nature of their efforts, upon which our own analysis is built. Instead, we call for a reinvigoration of that work, with a direct focus on changing the policies that have produced burgeoning prison numbers, so that sizeable dollars can be freed up to be reinvested. The time is right for a reset of the justice reinvestment movement.

I. The Original Idea of Justice Reinvestment

First coined by Susan Tucker and Eric Cadora in 2003, the concept of “justice reinvestment” has enjoyed an impressive reputation, spreading not only within the United States but also to the United Kingdom, Europe, Australia, and New Zealand. What Turner and Cadora originally conceived was a radical intervention into the problem of mass incarceration, designed as an ambitious rearrangement of public safety funding. They argued:

1. The main rationale justifying the growth in the U.S. prison population has been public safety, in the belief that higher incarceration rates will significantly lower crime rates.
2. Prison growth has been produced mostly by locking up an increasing number of people from America’s most disadvantaged communities.
3. This concentrated pattern of incarceration has had vast negative consequences for those communities, in particular eroding the human and social capital infrastructure of those places, and ultimately undermining the community capacity for producing public safety.
4. The increased financial cost of the growing prison system has reduced the government’s ability to invest in the human and social capital infrastructure in those communities hard hit by high rates of incarceration in ways that might ameliorate the consequences of high rates of incarceration.
5. In pursuit of criminal justice (defined as punishments proportionate to the specific crime and equitable in terms of race and socio-economic status), significant reductions in the prison population could be achieved without significantly jeopardizing public safety, allowing us to substantially reduce the cost of prison systems.
6. As a matter of social justice, then, money saved from closing prisons due to decarceration should be invested in infrastructure in those affected communities, in order to enhance overall quality of life and, in particular, to improve the kind of human and social capital that serves as a foundation for public safety in those communities.

Thus, the original case for justice reinvestment was housed within an ideal of social justice. On the one hand, it was claimed, penalties in the United States had grown to become wholly out of proportion to what is fair, based on the seriousness of the crime and compared to other democratic societies. More importantly, the impact of the growth in the prison system had fallen disproportionately on impoverished minority communities, breaking up families and producing intergenerational patterns of prison cycling that reinforced social and economic decline. To address the collateral damage of an outsized prison system, it would be necessary first to reduce the number of people behind bars, and then use the resultant savings to improve the social program infrastructure in the communities that had suffered at the hands of a generation of massive prison growth.

At the time Tucker and Cadora wrote, this point of view was a radical proposal to rework justice budgets and social
investments. Today, however, justice reinvestment is now broadly accepted as an attractive strategy for addressing mass incarceration, creating large reductions in imprisonment costs for state budgets, and redirecting public funding toward communities long hard hit by crime and incarceration. Not only is justice reinvestment being supported by some of the major U.S. philanthropies, but most current JRIs are directed by well-known, mainstream policy organizations—the Council of State Governments, PEW Charitable Trust, and the Vera Institute of Justice. The U.S. Department of Justice has also begun providing justice reinvestment financial support to state and local governments through its Bureau of Justice Assistance, and BJA now reports that 27 states are officially involved in the JRI movement in one way or another.

In this paper, we treat the justice reinvestment movement as a kind of policy experiment, comparing JRI and non-JRI states’ experiences with penal system reform. These comparisons are not perfect, we know, because there is not a perfect match between JRI and non-JRI states. But because so many of the states of the United States have undertaken the JRI process, we should see effects of this policy shift in the overall patterns of data.

II. The JRI “Experiment” and U.S. Imprisonment Growth

Our analysis begins with a review of the underlying dynamics of the historically unprecedented growth of the U.S. penal system. America’s imprisonment rate had been fairly constant from the 1930s (when such numbers were being recorded on an annual basis) to the 1970s (Figure 1). Until the 1970s, the two exceptions to the relative stability in incarceration rates were periods of wars (WWII and the Vietnam War) when large numbers of young men were drafted into military service. In 1975, the incarceration rate began to rise and did not peak until 2007. There has been a modest decline over the last decade.

A. What Explains the Growth in the U.S. Prison System?

How do we account for this massive incarceration in the U.S.? It is important to unravel various explanations to better understand the growth in prison populations. Much of the prison growth has been attributed to an increase in crime rates, which rose dramatically. However, the crime rate increase began in 1962—nearly thirteen years prior to the surge in imprisonment rates. By 1980, when prison growth began its greatest period of acceleration, the crime rate had already peaked. So the crime rate alone does not explain the growth in the rate of imprisonment.

Another explanation advanced to explain the growth in prison populations is the increase in the length of prison sentences imposed by judges. Yet as we show in Table 1, average prison sentences have largely declined since 1993 (the first year national data on sentences imposed by judges were available). This decline is true for virtually all crime types.

If the explanation is not crime rates, nor judicial sentencing, what is it? Recently, researchers who want to document the dynamics of prison growth have looked to what they call the Iron Law of Prison Populations: the structural fact that prison populations are the product of two statistical forces—admissions and length of stay (LOS). The
advantage of the Iron Law is that it explains changes in the number of prisoners through the population dynamics themselves, rather than having to rely on theories of political and legal change, about which there is considerable dispute.5 Changes in either or both of these two population dynamics are necessary and sufficient to determine changes in the size of a prison population.

Although national prison admission and LOS data are not available from the early 1930s, we can get a picture of the impact of these dynamics coinciding with the growth in the prison system. Figure 2 shows that both prison admissions and LOS have steadily grown at least since 1978, although admissions began a small decline in 2008, followed by an LOS decline a few years later. Much of the national decline in prison admissions can be traced to the state of California, which has seen its admissions decline from 141,000 in 2008 to only 39,000 in 2014 as a result of passage of its pioneering “realignment” legislation.6

Ominously, we now see evidence of a stabilization of prison admissions and LOS since 2012, which would imply that the modest decline in the prison population that started in 2010 may have begun to run its course.

B. Comparing JRI and Non-JRI State Trends

A majority of the 50 states are now associated with JRI initiatives. The Council for State Governments (CSG) lists 23 JRI states on its website, with 11 being classified as “active,” meaning that CSG is currently working in those states. The PEW Charitable Trusts and the Vera Institute add another 11 states that they consider as JRI sites. This makes for a total of 34 JRI states.7

A fundamental question is whether there are major differences in prison population trends between JRI and non-JRI states? To examine this question, we compared the population trends for the JRI states and the non-JRI states. We recognize that some JRI states have only recently passed or are in the process of passing reform legislation, so for purposes of this analysis, we excluded from the JRI states category, the states of Maryland, Alabama, Massachusetts, Idaho, Montana, Nebraska, North Dakota, and Pennsylvania. The remaining 26 states passed JRI related legislation and/or policy reforms prior to 2014.

Table 1. Average Maximum Sentence Length (in months) for New Court Admissions, 1993 vs. 2009

<table>
<thead>
<tr>
<th>Primary Offense</th>
<th>1993</th>
<th>2009</th>
<th>Difference</th>
</tr>
</thead>
<tbody>
<tr>
<td>All Offenses</td>
<td>71 mos.</td>
<td>65 mos.</td>
<td>-6 mos.</td>
</tr>
<tr>
<td>Violent</td>
<td>107</td>
<td>97</td>
<td>-10</td>
</tr>
<tr>
<td>Homicide</td>
<td>188</td>
<td>205</td>
<td>17</td>
</tr>
<tr>
<td>Kidnap</td>
<td>133</td>
<td>108</td>
<td>-25</td>
</tr>
<tr>
<td>Rape</td>
<td>141</td>
<td>158</td>
<td>17</td>
</tr>
<tr>
<td>Robbery</td>
<td>102</td>
<td>96</td>
<td>-6</td>
</tr>
<tr>
<td>Assault</td>
<td>76</td>
<td>65</td>
<td>-11</td>
</tr>
<tr>
<td>Property</td>
<td>58</td>
<td>50</td>
<td>-8</td>
</tr>
<tr>
<td>Burglary</td>
<td>69</td>
<td>59</td>
<td>-10</td>
</tr>
<tr>
<td>Larceny</td>
<td>46</td>
<td>42</td>
<td>-4</td>
</tr>
<tr>
<td>Motor vehicle theft</td>
<td>44</td>
<td>37</td>
<td>-7</td>
</tr>
<tr>
<td>Arson</td>
<td>89</td>
<td>81</td>
<td>-8</td>
</tr>
<tr>
<td>Fraud</td>
<td>52</td>
<td>44</td>
<td>-8</td>
</tr>
<tr>
<td>Stolen property</td>
<td>52</td>
<td>44</td>
<td>-8</td>
</tr>
<tr>
<td>Other property</td>
<td>48</td>
<td>44</td>
<td>-4</td>
</tr>
<tr>
<td>Drugs</td>
<td>62</td>
<td>57</td>
<td>-5</td>
</tr>
<tr>
<td>Possession</td>
<td>60</td>
<td>48</td>
<td>-12</td>
</tr>
<tr>
<td>Trafficking</td>
<td>65</td>
<td>67</td>
<td>2</td>
</tr>
<tr>
<td>Other/unspecified drug</td>
<td>54</td>
<td>51</td>
<td>-3</td>
</tr>
<tr>
<td>Other Crimes</td>
<td>89</td>
<td>50</td>
<td>-39</td>
</tr>
<tr>
<td>Weapons</td>
<td>52</td>
<td>55</td>
<td>3</td>
</tr>
<tr>
<td>Driving while intoxicated</td>
<td>52</td>
<td>44</td>
<td>-8</td>
</tr>
<tr>
<td>Other public-order</td>
<td>48</td>
<td>50</td>
<td>2</td>
</tr>
</tbody>
</table>

As a group there are no differences in the overall prison population trajectory for either the JRI or non-JRI states (Figure 3). The overall trends show a flattening in the state prison populations that began in 2008, followed by a slight decline after 2010. So at the overall level, prison populations in JRI states are not behaving differently from those in non-JRI states. Both appear to be on track with overall national prison population patterns.

If we examine specific state data from both groups, we see patterns that suggest the overall stabilization in the national incarceration numbers is being driven by just a few states that have significantly reduced their prison populations. Perhaps alarmingly for JRI proponents, the largest reductions have occurred in non-JRI states. This conclusion can be illustrated by examination of several specific JRI and non-JRI states.

III. Examples of Prison Reform Efforts


California’s state prison population substantially declined from a high of 174,282 in 2008 to 127,816 as of 2015. Further, the parole, probation, and jail populations have also been significantly reduced. Today there are over 185,000 fewer people in prison, in jail, on probation, or on parole (Table 2). This system-wide reduction was the combination of persistent litigation by private lawyers over many years, which resulted in a federal court order by a three-judge panel that required California to find ways other than building more prisons to depopulate its horribly crowded prisons. That order led to the passage of AB109 in 2011, which diverted a large number of nonviolent prisoners to the local counties with a large amount of funding to manage them either in the local jails and/or on probation. AB109 also eliminated parole supervision for many prisoners. In 2014, a ballot-sponsored initiative (Prop 47) that redefined seven felony crimes with regard to imprisonment further lowered the prison population to 127,421. In terms of the Iron Law, the prison litigation resulted in significant reductions in LOS for those people who were “realigned” to local correctional systems; Prop 47 resulted in significant reductions in prison admissions as well declines in the local jail and felony probation populations. And as the entire correctional system declined, crime rates continued to fall to their lowest levels in three decades.

B. New Jersey: from 31,493 to 21,590, 1999–2014

New Jersey also has witnessed a significant decline in its state prison population from 31,493 in 1999 to 21,590 by 2014. The decline in New Jersey’s prison population was triggered by litigation directed at the state’s parole board. The litigation was brought in 2000 by three inmates who demonstrated that the parole board was not hearing cases in a timely manner, illegally extending the period of
incarceration.\textsuperscript{9} Other reforms that followed were reductions in parole violations leading to imprisonment and the reclassification of drug offenses as ineligible for state imprisonment (2010).\textsuperscript{10} In Iron Law terms, parole litigation affected LOS, but changes in parole violation policy and drug law sentencing dramatically reduced prison admissions.

C. New York State and New York City: from 72,899 to 52,518, 1999–2014

New York’s state prison population has declined from 72,899 in 1999 to 52,518 by 2014. Unlike California and New Jersey, which were state-wide declines, New York’s decline can be linked to reforms that occurred in New York City. The rest of the state has seen no reduction in its prison population. Although several reforms were implemented within the NYC criminal courts, the major factor that explains the decline in state prisoners was the shift in targeted arrests by the New York Police Department.\textsuperscript{11}

Beginning in 1994, the number of felony arrests began to drop, while misdemeanor arrests increased. This reduction in felony arrests meant that, as a staple of the Iron Law, prison admissions began to decline.\textsuperscript{12}

The deep structural changes leading to Iron Law outcomes in these three states have not been matched by JRI states. Why is this so? There are many different patterns of reform within the large number of JRI states, and this essay cannot review all of them. Below we describe the experience in three JRI states, not as a way of characterizing all of that work, but to illustrate how the JRI model led to different kinds of strategies, with different sorts of outcomes. In doing so, we hope to contrast the states that have achieved the largest reductions with the more limited results of JRI-related efforts to date.

D. New Hampshire

In 2009, New Hampshire became a JRI state and worked with the Council of State Governments’ Justice Center to develop and implement policies to control a rising prison population and the associated costs. After considerable analysis and consultation with the CSG, the state passed SB500 in 2010, which took effect in 2011.

Soon afterward, the end-of-year state prison population declined by less than 150 inmates (from 2,761 to 2,614) and then increased to 2,963 by the end of 2014. State prison expenditures remained constant for two years. In addition, neither the crime rate nor county and municipal safety and correction costs increased, providing some evidence that public safety did not suffer and that costs were not simply shifted from the state to the local communities as a result of the reforms of SB500.
The Legislature amended the Justice Reinvestment Act in 2012 to give more discretion to the state’s Adult Parole Board, which reduced the parole grant rate, increasing the prison population and eliminating the expected savings that the JRI had projected.13

E. Mississippi
In 2013, Mississippi became involved in JRI with financial assistance from the Bureau of Justice Assistance and the PEW Charitable Trust. Within a year, legislation took effect: on July 1, 2014, HB585 reformed sentencing by shortening sentences for drug and other nonviolent crimes. It also created technical rehabilitation centers where parolees who violated the terms of their release would be incarcerated for up to 90 days as punishment for failed drug tests and other non-criminal violations. To compensate for these changes, people convicted of violent crimes were expected to serve a higher percentage of their prison sentences. Significantly, Governor Bryant boasted that the new bill would increase that portion of the prison population: “I have no tolerance for career criminals or violent offenders, and this legislation will allow Mississippi the resources to hold these offenders accountable.”

Prior to 2014, the Mississippi Department of Corrections was projecting an increase in its prison population from 22,497 to 24,448 by the year 2024. By 2015, the prison population had begun to decline. Part of that decline resulted from an earlier decision by the parole board to increase its rate of parole. The higher parole grant rates stabilized the prison population and started a downward trend under HB585. The other aspects of that same legislation were designed to increase the LOS for violent and “habitual” offenders, and the expected long-term increase in the prison population is now beginning to occur. The corrections budget has continued to rise accordingly.

F. Rhode Island
Of the four states that have produced double-digit percentage decreases in prison populations, Rhode Island is the only JRI site. In 2008, JRI-based activities resulted in the passage of HB7204, which increased the amount of earned time credits, established risk reduction programs, and used risk assessments in parole release decisions. Collectively, these reforms reduced LOS for a large number of people who were incarcerated, resulting in a net drop in the prison population of 19 percent from 3,888 in 2008 to 3,146 by 2014. These changes appear to have run their course, and current projections indicate no further reductions in the prison population.15 Prison expenditures have not been reduced and are currently growing at a rate of 3 percent per year.16

IV. The Diminishing Returns on JRI to Date
There has been a vigorous justice reinvestment movement in the United States in the last few years. The federal government has and continues to spend multiple millions of dollars to advance justice reinvestment work in the states, and dozens of states have initiated work under such a rubric. More than half the states have engaged in justice reinvestment activities. When we compare their collective progress on prison population reduction to the non-JRI states, there is no meaningful difference. The biggest state stories in prison population reduction did not do it through JRI processes. The population reduction strategies in the JRI states have been at best short-lived and mixed, and in some cases counter-productive.

If prison population changes have been discouraging, the reinvestment targets have been even more troubling. The prototype has been to invest in other correctional agencies and criminal justice agencies: probation/parole, halfway houses, drug treatment programs, and policing. The argument for this reinvestment strategy has been that if people are going to be released from prison, other aspects of the legal control systems must be strengthened. Nowhere, however, have savings been dedicated to community infrastructure or community health—youth programs, education, economic development, and the like.

To date, the conversation about justice reinvestment has largely been based on a fiscal/technocratic framing. Bipartisan consensus is the foundation for the work, establishing agreement on a change process as the starting place. States begin with a statistical assessment of flows into and out of prison, parole, and probation systems. They look for “leverage points” that can be used to achieve marginal reductions in the number of people in prison. People convicted of violent crimes, which constitute large proportions of state prison populations, are not targeted for reform of their lengthy sentences and lengths of stay, even though for most states, the increase in LOS for people convicted of these crimes has been at the heart of prison population growth.

It is as though the growth of prison numbers has been a product of some subtle mechanical or technical difficulty in the system, or some missing correctional programs, rather than a host of penal policies enacted mostly in the 1980s and 1990s. The issue of basic justice is raised only in service of the existing arrangement of penalties rather than as a basic challenge to those arrangements.

Nor does the issue of justice drive the reinvestment side of the equation. There has been virtually no analysis or discussion of those communities devastated by high rates of incarceration and crime. Rather, any significant decarceration proposal is critically questioned about how it might adversely affect crime rates by people being released “early” from prison. The estimated savings from prison downsizing have been devoted to calming these fears: more police, stronger parole, drug treatment slots, and the like.

A fair concern is whether a JRI strategy of targeted community investment actually can be effective. When one looks for examples of community investment options that (a) could be funded from prison reduction savings, and (b) would have a likely short-term payoff other than an increased police presence, one is easily discouraged—probably because there are none.
There is a strong literature of long-term, community-level investments that have long-term payoffs in economic and social benefits. Few, maybe none, of these strategies promise immediate crime reduction outcomes. Under the JRI rules of engagement, one can only advocate those “proven” strategies that will have a speedy impact on crime. The only investments that can qualify under this portfolio would be programs of other criminal justice system agencies. The irony that “reinvestment” came to mean moving funds from one state government agency to another seems to have gotten lost in the shuffle.

Eventually, even this feeble budgetary reallocation came under pressure. Once tax revenues dropped precipitously after the fiscal crisis of 2008, it became acceptable simply to reduce the tax burden of the corrections system on the overall state budget as a form of “justice reinvestment.” It followed, then, that major reductions in the number of people behind bars was a desirable but not necessary condition of reinvestment. Marginal reductions in correctional costs represented marginal reductions in the tax burden, and this was all to the good. Since most of the correctional savings were not actual reductions in prison budgets, but rather averted proposed increases in those budgets, there were actually no savings to be shared.

Of course, the reductions in the costs of corrections have rarely materialized as a consequence of most of the JRI efforts to date. Because most of the prison populations in JRI sites have shown either marginal or no population reductions, there have been no reductions in the size of the state prison budgets. For that to occur prisons would have to close. When the number of people the correctional system has to deal with changes only marginally, the budgetary effects are also marginal at best.

V. A Time for Meaningful Prison Reform
The time is ripe for a reinvigorated prison reform movement that would look very different that the current JRI model. A growing consensus exists on the political left and the right that the United States has a mass incarceration problem. “Get-tough” politics are no longer viewed as desirable or viable. But if the current JRI approach is lacking, what new options exist?

Let’s begin by updating the assumptions of JRI we listed earlier in a way that makes the problem more explicit:

1. While public safety is and will always be a national priority, there is an equally important priority of racial and social justice.
2. Prison growth has been drawn from policies that have a concentrated, adverse impact on disadvantaged communities.
3. This concentration has exacerbated racial and economic inequality.
4. Prison growth has greatly exceeded its limited impact on public safety and has eroded quality of life in high-incarceration-rate communities.
5. Divestment in the well-being of those communities goes hand-in-hand with “prisonization” of community life as twin pillars of the damage taking place there.
6. As a matter of justice, we should substantially decarcerate (by 50% or more) the aggregate state and federal prison system.
7. This can be largely done by simply returning to the sentencing practices that existed prior to 1980, when the crime rate was what it is today.
8. As a matter of justice, the money saved from closing prisons as a result of decarceration should be invested in infrastructure in those affected communities.

In this reformulation of the justice reinvestment rationale, the conclusion is the same, but the route getting there is based on a more manifest recognition of the racial and social inequalities that are the foundation for the failure of contemporary incarceration policies. This sharpens the “justice” framing of justice reinvestment, and places the “public safety” aspect of the argument in the background, where it needs to be. By freeing justice reinvestment from the yoke of public safety, we open the door for reinvestments that tackle inequality without having to pass a litmus test of public safety. Under this reformulation, a new orientation becomes ascendant, as illustrated by two implications of these assumptions:

1. Working at the margins is not enough; the fault lies with the changes in sentencing that created the vast prison system, and so sentencing itself has to be changed in order to produce large reductions in the number of people in prison.
2. The test for “reinvestment” is not public safety but social justice for communities; moving funds from one government sector to another merely to reduce the tax burden of justice is perverse.

The change strategy that flows from these implications is different from previous justice reinvestment approaches. Instead of beginning with a consensus about the change process, this reinvigorated version of justice reinvestment begins with consensus about a number: the prison population must be significantly reduced from X to Y. It also releases the change process from the fetters of fear: prison budgetary savings must be redirected into mechanisms that improve racial equality and social justice.

VI. The Math of Decarceration
It is now clear that meaningful reductions in the number of people in prison will have to make changes that affect people serving time—including people convicted of violent crime. The common admonition that we can deal with mass incarceration through sentencing changes for people convicted of first-time, nonviolent crimes and possession of marijuana is simply not true. Likewise, a focus on recidivism reduction (which has remained roughly stable for as
long as it has been measured) through more effective imprisonment and reentry programming, while certainly good to do, cannot produce meaningful reductions in prisoner numbers. Any agenda to address mass incarceration as a matter of social justice must confront the problem of large numbers of people in prison serving longer periods of imprisonment, especially for violent crimes.

There are good reasons to think that significant changes can be made in the way we punish people without endangering the public. These arguments have been made at length elsewhere, but the main points are threefold. First, changing the period of imprisonment by several months has no impact on recidivism rates. Second, there is wide variation in the amount of time served for people convicted of the same crimes and who have the same prior criminal record. Third, the imposition of mandatory prison terms and so-called truth-in-sentencing provisions only serve to fuel our high incarceration rate without providing any associated public safety benefits. It is as though we decided to sentence students to six years of college to make them smarter. Such a policy would likely increase the college student population by 50 percent but also make a college degree unaffordable to many others. And would those students really be smarter?

VII. Four Steps that Would Recalibrate Justice Reinvestment

To get a new agenda for justice reinvestment, we should take advantage of what we have learned from this work to date. Here is a step-by-step sketch:

Step I is to build state criminal justice systems that would return us to criminal justice and sentencing practices that existed prior to 1970. We use 1967 as our model benchmark because the crime rate today is what it was in 1967 (and had been for many decades; see Table 3). If we were to apply the 1967 incarceration rate to today’s U.S. population, the national prison population (both state and federal) would only be 312,522 inmates. This compares to the 1,561,525 figures of today.

As a starting point, the benchmark model has a number of advantages. It focuses the conversation to address the impact of laws, rather than the characteristics (risk and offenses) of people in prison and the kinds of programs available to them. It also establishes an aggressive prison reduction population goal.

Step II is to decompose the gap between the prison population under the benchmark model and the actual prison population into its component legislative parts. This provides a state-specific strategy for reducing the prison population, with estimates of the impact of each of the options on the number of prisoners, based on changes since the benchmark model existed.

Step III is to model the impact of changes in prison populations on levels of crime. This is done knowing what we know from recidivism studies and experiences in other states—notably California, but also New York, New Jersey, and Michigan—that have also experienced large reductions in prison populations, allowing the closing of prisons.

Step IV is to estimate the correctional savings from the changes. This amount would be put into a community investment fund, to be replenished each year. The fund would be designated for infrastructure investments—schools, child care, health care, business start-ups, community-based organizations, to name a few—designated for areas that have contributed high rates of people to the prison system. This approach can deliver a social investment strategy to mend the impacts of mass incarceration.

This approach differs from the usual JRI strategy in two ways. First, it begins by documenting what the correctional population would be if there had been no changes in the legal code since the 1980s. This locates the problem of prison growth in the policy arena, where it belongs, and it enables policy makers to see precisely which legal changes are responsible for prison growth. It does not begin with preconceptions about “consensus,” or drug law reform, or reentry strategies and programs. Second, it sets a goal of prison system homeostasis that has meaningful reduction as the criterion. The conversation that follows is not built around what people might agree they are willing to do to reduce incarceration at some level, but rather what data show must be done to achieve an end to mass incarceration.

VIII. Final Thoughts

This paper calls for an urgent rethinking of JRI legislation and implementation strategies in the United States. We show that, when comparing JRI and non-JRI states, there is no overall difference in the pattern of prison populations; indeed, larger reductions in prison numbers are found to have occurred in some of the non-JRI jurisdictions. Similarly, when asking what has been “reinvested” and where, the answer in JRI jurisdictions is, generally, very little in total, and only by growing the capacity of the justice system.

This is discouraging news for reformers, for two reasons. First, as we stated at the opening of this essay, we have arrived at a time when the forces that favor prison reform have aligned the political left and the political right to make ambitious reform possible in ways that have not been true for at least four decades. We recognize that one reason why the current crop of JRI results is so limited may be that this work was started well before this new consensus emerged about the need for sizeable reductions in the number of people in prison. Perhaps if the JRI activity were to begin today, it would have a much stronger practical foundation for reform, and strategies might be far less conservative in their intent.

Second, and more important, we are worried that the JRI initiatives have put into place policies and practices that

<table>
<thead>
<tr>
<th>Attribute</th>
<th>1967</th>
<th>2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Crime rate per 100,000</td>
<td>2,990</td>
<td>2,972</td>
</tr>
<tr>
<td>Incarceration rate per 100,000</td>
<td>98</td>
<td>471</td>
</tr>
</tbody>
</table>

Source: Bureau of Justice Statistics

Step IV is to estimate the correctional savings from the changes. This amount would be put into a community investment fund, to be replenished each year. The fund would be designated for infrastructure investments—schools, child care, health care, business start-ups, community-based organizations, to name a few—designated for areas that have contributed high rates of people to the prison system. This approach can deliver a social investment strategy to mend the impacts of mass incarceration.

This approach differs from the usual JRI strategy in two ways. First, it begins by documenting what the correctional population would be if there had been no changes in the legal code since the 1980s. This locates the problem of prison growth in the policy arena, where it belongs, and it enables policy makers to see precisely which legal changes are responsible for prison growth. It does not begin with preconceptions about “consensus,” or drug law reform, or reentry strategies and programs. Second, it sets a goal of prison system homeostasis that has meaningful reduction as the criterion. The conversation that follows is not built around what people might agree they are willing to do to reduce incarceration at some level, but rather what data show must be done to achieve an end to mass incarceration.

VIII. Final Thoughts

This paper calls for an urgent rethinking of JRI legislation and implementation strategies in the United States.20 We show that, when comparing JRI and non-JRI states, there is no overall difference in the pattern of prison populations; indeed, larger reductions in prison numbers are found to have occurred in some of the non-JRI jurisdictions. Similarly, when asking what has been “reinvested” and where, the answer in JRI jurisdictions is, generally, very little in total, and only by growing the capacity of the justice system.

This is discouraging news for reformers, for two reasons. First, as we stated at the opening of this essay, we have arrived at a time when the forces that favor prison reform have aligned the political left and the political right to make ambitious reform possible in ways that have not been true for at least four decades. We recognize that one reason why the current crop of JRI results is so limited may be that this work was started well before this new consensus emerged about the need for sizeable reductions in the number of people in prison. Perhaps if the JRI activity were to begin today, it would have a much stronger practical foundation for reform, and strategies might be far less conservative in their intent.

Second, and more important, we are worried that the JRI initiatives have put into place policies and practices that

<table>
<thead>
<tr>
<th>Attribute</th>
<th>1967</th>
<th>2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Crime rate per 100,000</td>
<td>2,990</td>
<td>2,972</td>
</tr>
<tr>
<td>Incarceration rate per 100,000</td>
<td>98</td>
<td>471</td>
</tr>
</tbody>
</table>

Source: Bureau of Justice Statistics
may tend to solidify the existing rates of incarceration, instead of providing a foundation that will generate long-term and continuing reductions in the numbers of people behind bars. If this is true, justice reinvestment, as practiced to date, may help to institutionalize high rates of imprisonment for decades to come.

But that need not be the case. Justice reinvestment is today more well suited to the prevailing mood than when it was first articulated. A reinvigorated JRI would first put in place the kinds of policies that are necessary to generate large prison population reductions. The savings could then be used to make community-level investments designed to promote the capacity within those communities, not by growing the law enforcement presence there but by providing support to the foundations of informal social control. This would be an agenda of criminal justice and social justice, at the same time.

We have learned a great deal from prison reform efforts to date around the country, some which were housed within JRI and others that were not. We now know that large reductions can be made in the size of prisoner populations. For example, in some non-JRI states, such as New York, California, and New Jersey, major reductions were achieved by redefining what crimes should constitute a felony, changing parole board practices (after litigation), limiting enforcement of parole conditions, reclassifying drug offenses to eliminate imprisonment as an option, and shifting policing to reduce the stream of felonies coming into the courts. In some JRI states, there is evidence that increasing parole grant rates, reducing sentence lengths for specific offenses, and enacting prison time credits can reduce LOS, and thereby bring down prison populations. These kinds of criminal justice system reforms and initiatives offer valuable pathways for how we can tackle the problem of mass incarceration.

Today’s moment needs a Big Idea. Justice reinvestment can be that idea. This essay is meant to call for a new, reinvigorated, redirected justice reinvestment movement in the United States, one that is designed with the high aim that fits the country’s readiness.

Notes


8. Austin, supra note 6.


10. Assembly Bill No. 2762 / Senate Bill No. 1866 returned dis- cretion to judges to waive mandatory minimum sentences for some nonviolent drug offenses.


12. Notably, concomitant trends included very sharp declines by 2009 in the NYC jail population (from 22,000 to 13,200), NYC probation population (77,000 to 44,000), and NYC parole populations (36,000 to 23,000). In total, there were approximately 75,000 fewer people in state prison, jail, probation, and parole by 2009.


17. For a summary, see Jeffrey B. Liebman, Building on Recent Advances in Evidence-Based Policymaking (2013).


20. We should emphasize that our analysis applies only to JRI as it has progressed in the United States. A very different story might well be told in other places where the JRI strategy has been tried. See, e.g., Chris Cunneen et al., Justice Reinvestment: Winding Back Imprisonment (2015).