

# INCARCERATION NATIONS NETWORK



## #DefundThePrisons

*"The challenge is in the moment; the time is always now"- James Baldwin*

Now is the time to #DefundThePrisons and fund communities. Time to make both immediate demands and systemic, abolition-focused demands. We need Band-Aids that stop the bleeding and save lives in the here and now, and a radically imaginative road map to a world without prisons. We want community justice, not criminal justice. We insist on investing in peace and equity.

### 13 FOR THE NOW

1. **Free people. Now.** Immediately release 25% of the US prison population and shorten all sentences by 25%.
  - Release: In 2016, the Brennan Center conducted an [in-depth analysis](#) to learn who was in prison and determine who could be released without jeopardizing public safety. They determined that more than 25% of state and federally incarcerated people could be released, and created guidelines for doing so. Some states are already on this path: Alaska (39% decline since 2006)<sup>1</sup>, New Jersey (38% decline since 1999), Vermont (35% decline since 2009), Connecticut (33% decline since 2007), New York (32% decline since 1999).<sup>1</sup> Crime did not increase; in fact in many cases crime rates decreased faster than national rates.<sup>2</sup>

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<sup>1</sup><https://www.sentencingproject.org/publications/u-s-prison-population-trends-massive-buildup-and-modes-t-decline/>

<sup>2</sup> <https://nicic.gov/fewer-prisoners-less-crime-tale-three-states>

- Reduce sentences: Theoretically, imprisonment is meant to deter people from committing crimes—yet according to a Brennan Center review of the [literature](#), as sentences lengthen, their deterrent effect *declines*. Based on its examination of the data, the Brennan Center recommended a standard 25-percent reduction in sentences for serious crimes that make up the bulk of the prison population.<sup>3</sup>

How?

- Immediately pass the [Second Look Act of 2019](#) which would appoint federal judges to consider petitions for sentence reduction after a person has served at least 10 years. Also pass the [Reverse Mass Incarceration Act](#). This act incentivizes states, via federal grants, to aggressively reduce state prison populations, as well create and fund alternatives to jail/prosecution/incarceration programs.
- Mass Clemency. One way to release incarcerated individuals and/or reduce sentences is for Governors to exercise Executive Clemency. Governors can and should grant clemency to show mercy, address a specific injustice, or correct disproportionate punishment of an entire class of incarcerated people. Because so many laws carry excessively long penalties, and excessively long sentences are being imposed for many classes of crimes, governors must examine and grant clemency on a massive scale to all people who are serving unjust sentences.

**2. Decriminalize petty offenses.** We must STOP using arrest and incarceration as the first responses to issues of poverty and public health. Congress and state legislators need to undo the harm they have caused through penal codes and discriminatory policies like the “war on drugs” and the explosion of “quality of life” offenses, which criminalize poverty. We must immediately start narrowing criminal statutes and decriminalizing behaviors that should be dealt with outside the criminal legal system.

- **Legalize Cannabis** nationwide, following the models used in [Canada](#) or [Uruguay](#). [Early evidence from these markets](#) shows that: use of the drug does not increase amongst adolescents; arrests fall dramatically; taxes derived from the market can be spent on other important societal functions such as education and drug treatment; and job opportunities are created. The United Nations

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<sup>3</sup> The six crimes analyzed include: aggravated assault, murder, nonviolent weapons offense, robbery, serious burglary, and serious drug trafficking. A similar analysis can be applied to other crimes for which prison may be warranted to determine whether sentences can be safely shortened.

supports the decriminalization of drug possession offenses; evidence also demonstrates that ending criminal sanctions for drug possession offenses can [reduce recidivism rates](#) and advance defunding of the police.

- **Repeal local ordinances** that criminalize people involved in the sex trades, drug trades, and street economies.
- **Immediately decriminalize all misdemeanor offenses**, which currently account for [80% of total court dockets](#).
- **Repeal local ordinances that criminalize the occupation of public spaces**—particularly for people experiencing homelessness—under statutes against loitering, loitering for the purposes of sex work, fare beating, panhandling, soliciting, camping, sleeping, and public urination and defecation.
- **Repeal statutes that criminalize survivors of gendered violence**, including mandatory arrest and failure to protect laws.
- Call on Mayors to **grant clemencies to criminalized survivors of violence**.

**3. Eliminate pretrial detention.** People in pretrial detention now make up more than two-thirds of America’s jail population: nearly half a million people.<sup>4</sup> Everyone has a fundamental right to pretrial liberty and is presumed innocent under the law. Pretrial detention undermines this fundamental principle and creates a process that punishes people before they are tried--mostly those who are poor and cannot pay bail--and then pushes them into forfeiting rights and pleading guilty. Jails are harmful environments where people wait months and sometimes years for trial, taking a disproportionate toll on the poor and communities of color. On top of everything, they are costly: We could save \$14 billion each year by phasing out pretrial detention all together<sup>5</sup>. Additionally, if the impact on families, communities, and social services are taken into consideration, the possible economic savings could be as much as \$140 billion annually!<sup>6</sup> The Bail Project has put forth a [framework for how to move towards eliminating pretrial detention](#).

An important first step is to **eliminate cash bail and other onerous release conditions**. One of the main drivers of the problem is the inability of defendants to pay what is typically \$10,000 in money bail.<sup>7</sup> One report by [Prison Policy Initiative](#) finds that most people who are unable to meet bail fall within the poorest third of society. The same report finds that the median bail bond amount represents eight months of income for the typical detained defendant. Four out of ten Americans cannot even cover a \$400 unplanned expense.<sup>8</sup> Instead of cash bail, courts should increase their use of

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<sup>4</sup> Wendy Sawyer & Peter Wagner, “Mass Incarceration: The Whole Pie 2019,” Prison Policy Initiative, March 2019, <https://www.prisonpolicy.org/reports/pie2019.html> .

<sup>5</sup> Pretrial Justice Institute, “Pretrial Justice: How Much Does It Cost?” January 2017 <http://www.documentcloud.org/documents/3439051-Pretrial-JusticeHow-Much-Does-it-Cost.html>

<sup>6</sup> Ibid.

<sup>7</sup> <https://www.prisonpolicy.org/reports/incomejails.html>

<sup>8</sup> Board of Governors of the Federal Reserve System, “Report on the Economic

non-financial pretrial release such as release on own recognizance, which is when a defendant signs an agreement that he will appear in court as required and is not required to pay any money. The [Bail Project](#) offers a successful model for eliminating the need for bail funds called [Community Release with Support](#). This model has successfully ensured that 90% of 10,000 participants appeared for court dates.

Other pretrial release conditions that are restrictive should also be eliminated. These include curfews, mandatory drug/alcohol testing, electronic ankle monitoring and home arrest. These do not increase court appearances and create harm that can deeply impact employment, housing, childcare, family and social relationships and more.

- 4. Stop turning communities into prisons.** E-carceration (electronic incarceration) transforms physical prison bars into virtual ones by creating an omnipresent form of surveillance. Electronic monitors combined with house arrest represent the most obvious and most punitive form of E-Carceration. But there are other nefarious surveillance technologies: license plate readers, facial recognition software, metadatabases. Together these technologies can transform already over-policed and over-incarcerated communities of color into digital prisons depriving people of liberty. This can effectively undermine efforts to decarcerate and end mass incarceration, by furthering the targeting of communities of color and imprisoning people in their homes and communities.

Ankle bracelets or Electronic Monitoring (EM) should never be used as forms of pretrial, probation or post-release (parole) detention. The rules for wearing a monitor are traumatically restrictive and limit people's freedom in ways that make it often impossible to hold jobs, seek medical treatment, or reintegrate into families and communities. On top of that, [research](#) shows that these devices don't make communities safer and don't approve appearance rates.

## **5. Education not incarceration**

- Require every state's department of corrections to allocate at least 10% of its budget to college programs behind bars.
- End the school-to-prison pipeline: Remove police, both public and private, from all schools, and demand that all universities dissolve relationships with police departments. End school zero-tolerance disciplinary policies and demand that states repeal truancy laws.

## 6. Ban the box and eliminate background checks.

Make it illegal in each state for all jobs to ask and discriminate against a person about his or her criminal record. Research affirms that a conviction record reduces the likelihood of a job callback or offer by nearly 50%. Over 150 cities and counties and 34 states and Washington, DC, have adopted ban-the-box policies for public jobs; thirteen states and eight cities/counties extend these laws to the private sector. Many private employers have adopted BTB policies voluntarily and they are also being applied to university applications, hospitals and housing applications. Research shows that ban the box increases call back rates<sup>9</sup> for formerly incarcerated people and some case studies illustrate increased hiring. Robust fair-chance hiring laws should go beyond banning the box and include:

- Strong penalties for employers and incentives for complainants
- Anonymity and retaliation protection to help jobseekers and workers come forward.
- Employer outreach and outreach to job seekers and community leaders/service providers to ensure they all understand the law and complaint processes.

**7. Phase out parole boards.** Parole Boards determine how much of their sentence an incarcerated person will face. Parole boards, consisting of a governor's appointees who are paid well and have little incentive to rock the boat, are not transparent, wield extreme discretion and are unguided by explicit standards and elements of due process. The institution is so flawed that it should be abolished completely. As more individuals are released and sentences shortened - as per demand 1- the need for parole boards will be drastically reduced. As we move towards eliminating prisons by implementing our demands, parole boards can be completely phased out.

Until parole boards are eliminated altogether, we must **immediately make existing Parole Boards transparent**. Parole systems should give every incarcerated person the opportunity to earn release and have a fair, transparent process for deciding whether to grant it. The following should be implemented immediately<sup>10</sup>:

- Every individual should be eligible for parole
- There should be a clear and transparent list of things one must do to make parole

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<sup>9</sup> See Agan and Starr, 2016 [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2795795](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2795795) and Craigie, 2019 [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2906893](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2906893) .

<sup>10</sup> Based partially on a report by Prison Policy Initiative [https://www.prisonpolicy.org/reports/grading\\_parole.html](https://www.prisonpolicy.org/reports/grading_parole.html)

- Incarcerated people should have access to all documents the board uses to make a decision
- Parole boards should have guidelines, which are publicly available, that help them make unbiased decisions
- They should publish a yearly report on outcomes that deviate from those guidelines
- Parole Board's decisions, hearings minutes, commissioner decision history, and commissioner appointments should all be public record.
- Parole board hearings should be in person
- There should be a process to challenge incorrect information
- Prosecutors and survivors of crime should not be able to weigh in on parole
- Supportive testimony should be encouraged
- Individuals who are denied parole and fit all the requirements should be able to appeal a denial
- Formerly incarcerated people should be overwhelmingly represented in parole board appointment pools

**8. Eradicate departments of parole.** Parole supervision rarely prevents recidivism and is in fact a revolving door that re-incarcerates people for parole violations, keeping them under the tyrannical control of the criminal justice system for years more after release.

Until departments of parole are eliminated altogether, we must **immediately stop re-incarcerating for parole violations**. One way to do this: States nationwide can adopt NY's Less is More Act. This Act eliminates incarceration for almost all technical parole violations, requiring prompt judicial review of parole warrants, placing caps on revocation sanctions for both technical and non-technical violations, and allowing people to earn time off their parole terms with good behavior. Savings from these reforms will be used to fund costs related to implementation of the legislation and reinvested in non-profit organizations for affordable and supportive housing; treatment programs for substance abuse and mental health issues; and employment, education, and training services for those remaining under community supervision.

**9. Fund reentry.** Require all local and state governments to have a reentry job bank for people coming home, akin to [Singapore](#)'s. Create tax-cut incentives for companies to join it. Demand that at least 20% of government housing budgets support housing for formerly incarcerated people.

**10. Immediately re-enfranchise currently and formerly incarcerated people in every state.** Nationally, an estimated 4.5 million voters are banned from voting or running for office, and 10 states impose lifetime voting

bans for some convictions.<sup>11</sup> Currently only two US states do not restrict voting rights of anyone with a felony conviction, including those in prison. Felony disenfranchisement has potentially affected the outcomes of U.S. elections, particularly as disenfranchisement policies disproportionately impact people of color. Nationwide, as of 2016 one in every 13 black adults could not vote as the result of a felony conviction, and in four states – Florida, Kentucky, Tennessee, and Virginia – more than one in five black adults was disenfranchised. Denying the right to vote to an entire class/race of citizens is the ultimate representation of mass incarceration as the new Jim Crow.

## 11. Divorce Capitalism and Justice

- Make all state and city prison phone calls free.
- End all fines and fees associated with the criminal legal process, including ticketing, cash bail, court costs, and parole and probation fees.
- Demand that all public pensions stop investing in private equity prison profiteers. Private equity firms use capital from pension funds, foundations, university endowments, and other institutional investors to “flip” private companies much like a contractor flips properties. After buying a company, a private equity firm will spend 4-6 years acquiring its competitors and increasing profitability before selling the company for a large profit. And unlike public companies that are traded on the stock market, private companies are typically shielded from public scrutiny and oversight, still their institutional investors create vulnerabilities and pressure points.
- Ban for-profit companies from profiting from ankle bracelets and electronic monitoring systems. These devices shift the costs of incarceration from government to individuals monitored and their families. Profiteering [companies](#) are trying to grow the use of monitors that have costly daily user fees (sometimes up to \$15-20) and are driving people into debt. The GEO Group, the largest private prison company, also owns the largest electronic monitoring company, BI Incorporated. They have a record of abuse in their prisons and should not be able to profit additionally off of Electronic Monitoring (EM).

**12. End prosecutorial immunity.** Horrendous prosecutors who have put innocent people in jail should not be an exception and are not above the law. Because of the present status of the law, prosecutors responsible for wrongful convictions have neither been held criminally or civilly responsible. Absolute immunity should judicially or legislatively be lifted. At minimum prosecutors who wrongfully convict should have their license come under review and potentially revoked. Finally, prosecutors who

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<sup>11</sup> Calculation based on 2016 numbers reported by the sentencing project (<https://www.sentencingproject.org/publications/felony-disenfranchisement-a-primer/>) and reduced by 1.5 million given recent changes in the laws in Florida and other states.

intentionally withhold evidence resulting in a wrongful conviction should be prosecuted for obstruction of justice.

**13. Radically change the requirements for being a corrections officer.** Build a true “corrections guide” training school akin to [Norway](#)’s, in which people study social work, law, philosophy, psychology and more. Transform the profession and pay altogether.

## **SIX FOR THE WIN**

*Justice Reinvestment means reinvesting prison budgets in: Reentry services; Restorative justice programs; Education programs; Credible messenger programs; Housing; Jobs*

1. Require and provide funding for every district to have a robust restorative justice division for both juveniles and adults.
2. Require and provide funding for every district to have a robust credible messenger-run peacemaking/violence interruption program, building peace in the community at the grassroots level.
3. Require and provide funding for every district to develop a community justice center, akin to the ones Canada is developing.
4. Defund departments of parole. Transform them into massive social worker-run entities who assist with jobs, housing and education.
5. Legalize all drugs and implement nation-wide harm reduction programs and policies, modeled after Portugal and Switzerland’s. Create a system of reparations for those who have been impacted by harmful, irrational drug laws for decades.
6. Start moving the US constitution toward justice. Create a constitutional amendment that bans any marriage between capitalism and justice, thereby removing for-profit industries from the justice sphere altogether and banning the prison industrial complex. Remove the clause of the 13th amendment that makes slavery legal in punishment for a crime--thereby legalizing mass incarceration.