



Written Submission of the American Civil Liberties Union (ACLU) to the United Nations Office on Drugs and Crime

## **Strategies on Reducing Reoffending in the United States**

August 26, 2022

### **I. Introduction**

The American Civil Liberties Union (ACLU) is a nonprofit organization founded in 1920 to defend and preserve the individual rights and liberties guaranteed by the Constitution, laws, and treaties of the United States. With more than 4 million members, activists, and supporters, the ACLU is a nationwide organization that fights in courts, legislatures, international fora, and communities in all 50 states, Puerto Rico, and Washington, D.C., to defend and preserve the individual rights and liberties that the Constitution and the laws of the United States guarantee everyone in this country. The ACLU works to end mass incarceration and racial injustice and for decades has defended prisoners' rights, including through supporting rehabilitation programming and dignified reentry programs for formerly incarcerated people. This submission is made in response to a call for input on promising practices in reducing reoffending.

The United States incarcerates more people, in both absolute numbers and per capita, than any other nation in the world. Even though the United States makes up close to five percent of the world's population, more than 20 percent of the world's people are incarcerated in the United States.<sup>1</sup> There are staggering racial disparities in imprisonment. Black and Latinx residents are incarcerated at rates five and three times higher than white residents, respectively.<sup>2</sup> Black women are also twice as likely to be incarcerated as white women.<sup>3</sup> The rate of mass incarceration significantly increased following U.S. policies, such as the “war on drugs” and “tough-on-crime” sentencing policies.<sup>4</sup> The policy choices of harsher criminal penalties are unique factors that shaped mass incarceration.

The United States' overreliance on its carceral system, which disproportionately impacts minorities, significantly exacerbates the rate of recidivism. In 2018, the Office of Justice Program's Bureau of Justice Statistics conducted a study that found that five out of six people incarcerated in state prisons reoffended and were reconvicted within nine years of their release.<sup>5</sup> The majority were incarcerated with mental illnesses or substance use disorders and left incarceration still struggling with those same issues, in addition to new issues such as accessing housing and education.<sup>6</sup> In order to reduce reoffending, it is vital that the U.S. government addresses systemic deficiencies that contribute to recidivism and implement programming that facilitates rehabilitation and reentry.

## **II. Systemic Deficiencies Contributing to Recidivism in the U.S.**

In conjunction with mass incarceration, additional systemic deficiencies contribute to recidivism in the United States. Specifically, the lack of rehabilitative programming for people with substance use or mental health disorders significantly increases the likelihood that individuals will reoffend. Furthermore, individuals released from prison frequently encounter barriers to employment, housing, and education, which impedes their successful reentry into society and substantially contributes to recidivism. Overall, expanding the “social safety net” for formerly incarcerated people, for example through government assistance programs, can reduce the likelihood of recidivism.<sup>7</sup> Additionally, inhumane prison conditions, like solitary confinement, have also exacerbated recidivism. Lastly, individuals on probation and parole are often reincarcerated for even mere technical violations.

### **A. Lack of Programs Supporting Rehabilitation**

The United States’ lack of adequate programs that support rehabilitation and successful reentry into society significantly contributes to recidivism. The criminal legal system does not provide appropriate support and treatment to people with substance use disorders and mental illnesses.<sup>8</sup> Instead, the U.S. carceral system centers on punishment rather than treatment. Yet a disproportionate number of people with mental illnesses and disorders are incarcerated. Particularly, the rate of serious mental illness among incarcerated people is two to six times higher than it is in the general population. Over 70 percent of people in jails with a serious mental illness also have a substance use disorder. Most of these people are in jail for nonviolent, low-level offenses and do not receive care.<sup>9</sup> Studies have shown that improving substance use disorder treatment leads to a reduction in recidivism.<sup>10</sup>

Research also shows that barriers to employment, housing, education, and civic participation increase the likelihood that formerly incarcerated people will reoffend and reenter the prison system.<sup>11</sup> Recidivism is indeed reduced when these individuals have savings and stable employment.<sup>12</sup> Studies have established that joblessness is the single most important predictor of recidivism.<sup>13</sup> Because of the stigma associated with a criminal record and government policies that block eligibility for occupational licenses, 75 percent of individuals who were formerly incarcerated remain unemployed a year after their release. For Black Americans, the adverse effect of a criminal record on a job interview is 40 percent greater than that of white people with similar records. Notably, 70 percent of prison workers surveyed by the Bureau of Justice Statistics said the most important reason for working is to develop skills that they can use to build careers after release.<sup>14</sup> Yet prison labor programs, for example, fail to provide incarcerated workers with transferable skills or livable wages. As such, people who are formerly incarcerated are released with little money and face significant barriers to employment.<sup>15</sup>

Relatedly, housing instability significantly increases the likelihood of formerly incarcerated people reoffending.<sup>16</sup> This is due to factors including requirements such as criminal background checks, statutes prohibiting people with certain convictions from living in government-subsidized housing, poverty, and structural racism.<sup>17</sup> In fact, people who are formerly incarcerated are 10 times more likely than the general public to become unhoused.<sup>18</sup> Such insecurity detrimentally impacts an individual’s return to society and resultantly increases the likelihood of recidivism.

Multiple studies have also documented the way in which cash bail and pretrial detention undermine public safety.<sup>19</sup> A large study of cash bail in Philadelphia and Pittsburgh found that assigning cash bail to a defendant increases the likelihood of recidivism by six to nine percent. Furthermore, a 2016 study of people charged with misdemeanors in Harris County, Texas (Houston), found that pretrial detention was associated with a 30 percent increase in felonies and 20 percent increase in misdemeanors within 18 months of the initial bail hearing.<sup>20</sup>

Eliminating barriers to welfare benefits can also serve to reduce rates of recidivism. The 1996 Personal Responsibility and Work Opportunity Reconciliation Act (“PRWORA”) imposed a denial of federal benefits to people convicted in state or federal courts of felony drug offenses.<sup>21</sup> The ban is imposed for no offenses other than drug crimes, and its provisions subject individuals who are otherwise eligible for the federal Supplemental Nutrition Assistance Program (“SNAP”) or Temporary Assistance for Needy Families (“TANF”) benefits to a lifetime disqualification that applies in all states unless the states act to opt out of the ban through legislation. This welfare ban disproportionately impacts Black Americans and other racial minorities because of the staggering racial disparities in drug conviction and sentencing for such convictions despite data by the Department of Health and Human Services consistently demonstrating that white, Black, and Latinx residents use drugs at roughly comparable rates.<sup>22</sup> Significantly, studies reveal that public assistance eligibility for people with convictions reduces one-year recidivism rates by 10 percent.<sup>23</sup> By removing barriers to government benefits and ensuring that people leaving incarceration receive these benefits, the U.S. could reduce poverty and recidivism.

Moreover, education plays a vital role in reducing recidivism. Studies show that individuals who receive post-secondary education while incarcerated are less likely to recidivate than those who do not.<sup>24</sup> The most prominent meta-analysis conducted by the RAND Corporation in 2014 demonstrated that people who participate in any kind of educational program while incarcerated, from vocational auto shop classes to college-level courses, are up to 43 percent less likely to re-offend and return to prison.<sup>25</sup> The study also demonstrates that individuals who participate in educational programs are consequently more likely to find a job after their release and find social stability.

Furthermore, felony disenfranchisement laws impede rehabilitation, ultimately leading to higher rates of recidivism. Over 5 million Americans, disproportionately Black and Brown citizens, are prohibited from voting simply because they have been convicted of crimes.<sup>26</sup> There are felony disenfranchisement laws in 48 states that either prohibit individuals from voting exclusively during their incarceration and while they are on probation and parole, or permanently.<sup>27</sup> Despite the fact that civic participation is linked to low recidivism, felony disenfranchisement laws are widely used in the United States to revoke voting rights from people with convictions and further isolate them from their communities as a result.<sup>28</sup>

## **B. Solitary Confinement**

Solitary confinement is a form of imprisonment that has been overused and abused in the United States.<sup>29</sup> Currently, more than 10,000 people — representing nearly 8 percent of the total federal prison population — are in some form of solitary confinement in federal Bureau of Prison facilities on any given day.<sup>30</sup> This number does not even include people held in solitary confinement in state prisons, which holds the bulk of the U.S. incarcerated population.<sup>31</sup> This common and cruel practice which often amounts to torture, does little to improve safety and leads to an increase in recidivism<sup>32</sup> because people in solitary confinement are generally denied the opportunity to participate in rehabilitative programs, such as educational programs, job training, and mental health or drug treatments.<sup>33</sup>

Research has shown that solitary confinement, even for a short period, substantially increases the risk of committing more crimes after release from prison.<sup>34</sup> Specifically, one study found that being placed in solitary confinement increases the risk of reoffending within three years after release by approximately 15 percent.<sup>35</sup> An evidence-based program in San Francisco, Resolve to Stop the Violence Project (RSVP), which involved full days out of cells, congregate programming, and therapeutic community engagement, showed dramatic reductions in violence inside jail and reductions in recidivism post-incarceration.<sup>36</sup> The lack of programming to prepare individuals for reentry into society, in addition to the psychological damage caused by solitary confinement, impedes their reentry into society and can lead to recidivism.<sup>37</sup>

## **C. U.S. Parole and Probation System**

Probation and parole are promoted as alternatives to incarceration in the United States. But rather than diverting people from confinement, probation and parole are feeding jail and prison populations. As of 2019, 4.4 million adults—or one in every 59—were under supervision.<sup>38</sup> Rates of supervision in the United States are five to ten times the rates of European nations, similar to incarceration rates. Even though numerous experts have agreed that supervision terms of more than a few months or a couple of years have little safety or rehabilitative value, many jurisdictions sentence people to years, decades, or even life on supervision.<sup>39</sup> People on supervision must follow myriad burdensome requirements, including unaffordable fines and fees, frequent reporting, and abstinence from drugs and alcohol—while supervision departments generally fail to provide resources to help people navigate these rules or obtain necessary health resources.<sup>40</sup> Resultantly, many people wind up back in jail or prison for “technical” violations of their supervision rules or for new offenses, most often public order, drug, and property crimes. In 2017, nearly half of all state prison admissions stemmed from supervision violations.<sup>41</sup> At root, such violations often result from poverty, homelessness, systemic racism, and inadequate health resources.<sup>42</sup> There is little to no evidence that locking people up for such violations enhances public safety or reduces recidivism. Conversely, studies show that incarcerating people, particularly for a long time, makes it harder for them to re-enter their communities and can increase recidivism.<sup>43</sup>

### **III. Promising Practices in the United States**

There is a strong relationship between quality programming and reductions in rates of recidivism in the United States. Public safety could be better achieved by spending less money incarcerating people and more on health care, education, housing, employment, and other rehabilitative programs.<sup>44</sup> Several programs have been initiated by federal, state, and local governments as well as nonprofit organizations to combat the variables that contribute to the likelihood that individuals will reoffend post-incarceration.

#### **A. Examples of Promising Programs in the U.S.**

The initiative, YouthBuild SMART (Start Making a Real Transformation) Program, was a pilot program created to support young adults while they are incarcerated and post-incarceration. The initiative was funded by a 2011 grant from the US Department of Labor. The program, which lasts on average 10 months, offers low-income young adults an opportunity to complete their secondary education and gain essential job skills. The program also emphasizes community service and provides leadership training. This replicable program led to a substantial decrease in recidivism in participants just one year after reentry. YouthBuild continues to empower young adults to “reclaim their education, gain job skills, and become leaders in their communities.”<sup>45</sup> In 2019, YouthBuild served approximately 7,000 students within the United States and its participants had only a 9% recidivism rate within one year of enrollment.<sup>46</sup>

The Federal Prisons Industries program, known as UNICOR, functions as a wholly owned corporation of the U.S. government that employed 16,315 federally incarcerated people in fiscal year 2021 to produce goods and services.<sup>47</sup> The program provides some vocational training and has seven areas of manufacturing carried out by people incarcerated in federal prisons: metals, wires and plastics, vehicular repair/manufacturing, data and document conversion services, electronics, woods, and fabrics/materials.<sup>48</sup> The program has been shown to reduce recidivism; individuals who participated in the program were found to be 24 percent less likely to recidivate as much as 12 years following their release.<sup>49</sup> Participants in the program were also more likely to be employed after release from prison than similarly situated individuals. Yet the program has a 25,000-person waitlist and employs only 8 percent of workers incarcerated in federal prisons. There are numerous troubling aspects of the UNICOR program, including low wages of only \$0.23 to \$1.15 per hour, of which 59 percent is deducted by the federal government for the cost of confinement and other fees, and hazardous working conditions.<sup>50</sup> Instead, prison work should provide incarcerated workers with marketable skills and training that will help them to find employment after release while also paying workers prevailing wages and guaranteeing them the standard labor protections afforded to other workers in the United States with regard to minimum wages, health and safety standards, and protection from discrimination, among other protections.

To address the role of housing in recidivism, the New York City Housing Authority launched the Family Reentry Pilot Program in New York in 2013.<sup>51</sup> The program was created to provide formerly incarcerated people with a safe and stable living environment post-incarceration, in an effort to improve their quality of life and accordingly reduce their risk of reoffending. The program reunites formerly incarcerated men and women with their families in public housing and partners with community organizations to offer participants reentry services. Following the pilot program’s low recidivism rates, the New York City Housing Authority now partners with reentry organizations to help people with conviction records transition into housing.<sup>52</sup>

City of Seattle’s Law Enforcement Assisted Diversion (LEAD) was another successful diversion program created to address reentry obstacles for formerly incarcerated people who were convicted of drug offenses, such as lack of access to income and benefits, unemployment, and homelessness.<sup>53</sup> Instead of incarceration and prosecution, the program offered individuals case management and legal assistance. Case management included connecting participants with community resources, such as housing and counseling, and providing financial support for the fulfillment of individuals’ basic needs. Case managers used a harm reduction approach, which entailed nonjudgmental and client-driven goal setting, with no requirement of abstinence from substances. An analysis of the program revealed that participants were significantly less likely to recidivate, especially when they obtained housing and employment through LEAD involvement. Overall, LEAD positively affected people who are formerly incarcerated and improved public safety.<sup>54</sup>

Most recently, a project known as Returning Citizens Stimulus provided cash to people recently released from prison in an effort to combat the common challenges they face upon release and to prevent recidivism.<sup>55</sup>

## **B. Efforts by the United States Department of Justice to Address Recidivism**

Although mass criminalization and incarceration remain high, the U.S. government has also taken steps forward in combating high rates of recidivism in the United States. Most notably, the Department of Justice convened the Federal Interagency Reentry Council in January 2011 in an effort to “reduce recidivism and improve outcomes related to employment, education, housing, health, and child welfare.”<sup>56</sup> The Reentry Council is comprised of more than 20 federal agencies that collaborate to advance programs and policies that reduce barriers to successful reentry. For example, the Department of Justice collaborated with the Department of Education and issued joint guidance on expanding correctional education resources following a study showing such programs reduced recidivism. The Department of Education also later launched the Second Chance Pell pilot program, which allowed an estimated 12,000 incarcerated individuals to receive grants and pursue postsecondary education.<sup>57</sup> The Reentry Council helped reduce barriers to housing when the Department of Housing and Urban Development issued guidance on reducing barriers to housing for those with criminal records.<sup>58</sup> Additionally, through the efforts of the Reentry Council, the Department of Health and Human Services facilitated access to health care coverage and physical and behavioral health services for formerly incarcerated people. The Reentry Council continues to promote the successful reintegration of individuals returning from prison by strengthening opportunities for second chances, and as a result, reducing recidivism and increasing public safety.

The Department of Justice has also implemented the First Step Act in 2018. The Act enforced several criminal justice reforms, such as cutting unnecessarily long federal sentences, improving conditions in federal prison, reducing the United States’ large prison population, and developing systems to reduce recidivism.<sup>59</sup> The law also requires the U.S. Attorney General to develop a risk and needs assessment system to be used by the Bureau of Prisons to assess the needs of incarcerated people. The Bureau of Prisons would then use this information to place them in evidence-based recidivism-reducing programs and activities, including vocational training, educational classes, and behavioral therapy.<sup>60</sup> Recently, as part of the implementation of the Act,

President Joe Biden announced a collaboration between the Department of Justice and Department of Labor to invest funds to “provide job skills training and individualized employment and reentry plans for people incarcerated in Bureau of Prisons (BOP) facilities, and to provide pathways for a seamless transition to employment and reentry support upon release.” However, it is important to note that the risk assessment tool created by the Department of Justice, in connection with the First Step Act, gives the Bureau of Prisons and the Attorney General excessive discretion in the design, implementation, and review of the tool, which has resulted in racial disparities.<sup>61</sup>

The First Step Act also expands the Second Chance Act of 2007. Under this provision, the Bureau of Prisons developed guidance for “wardens of prisons and community-based facilities to enter into recidivism-reducing partnerships with nonprofit and other private organizations, including faith-based and community-based organizations to deliver recidivism reduction programming.”<sup>62</sup> As such, the First Step Act also reauthorizes a number of grant programs aimed at improving the reentry process first authorized by the Second Chance Act.<sup>63</sup> Among the awardees of such grants is the Detroit Rescue Mission Ministries, which supports people with convictions by providing them with food, housing, addiction treatment, job skills, and gainful employment. Programs at the Lower Brule Sioux Tribe in South Dakota also use the grant to continue their work to improve access to services for people with substance use disorder and mental illnesses who are reentering their communities.<sup>64</sup> Nevertheless, the provision under the Act that the Bureau of Prisons shall enter into partnerships under policies developed by the Attorney General “subject to appropriations,” could result in further privatization of public functions and would allow private entities to profit from incarceration.<sup>65</sup> Ultimately, while reforms under the First Step Act are helpful, they do not do nearly enough to remedy past discriminatory treatment or change laws, policies and practices in ways that would prevent discrimination in the future.

### **C. Other Examples of Legislation Addressing Contributors to Recidivism**

On June 19, 2021, New Jersey Governor Phil Murphy passed the Fair Chance in Housing Act in an effort to eliminate barriers to housing for formerly incarcerated people. The law provides protections for people with criminal records when finding housing. For example, rental applications in New Jersey will no longer ask about criminal convictions and the law limits housing providers’ use of background checks to probe an applicant’s criminal history.<sup>66</sup>

In Wyoming, House Bill 31 was passed in March 2020 to address the need for mental health and substance use diversion programs. The legislative piece requires the Department of Health and Department of Corrections to collaborate in order to effectively reduce recidivism by improving programming and funding.<sup>67</sup>

In 2021, New York state lawmakers passed the Humane Alternatives to Solitary Confinement (HALT) Act.<sup>68</sup> HALT prohibits solitary confinement for longer than 15 consecutive days, or 20 days total in any 60-day period. It also bans the use of solitary confinement for vulnerable populations. Critically, HALT requires jails and prisons to create units with access to rehabilitative services. The law increases the chances that people will successfully reintegrate into society when they are released.

## IV. Conclusion

In order to decrease recidivism, it is vital to address systemic deficiencies in the U.S. criminal legal system, such as mass incarceration, which significantly contributes to high rates of reoffending and reconvictions. Studies have shown that rehabilitative programming that supports reentry into society can substantially reduce rates of recidivism. It is essential that efforts to combat recidivism include eliminating barriers to housing, employment, education, government benefits, and mental health or substance use disorder treatment. By supporting holistic reentry and removing structural discrimination and stigmatization that people who are formerly incarcerated face, the likelihood that individuals will recidivate will significantly decrease.

The ACLU welcomes the work of the newly established open-ended inter-governmental working group tasked with developing model strategies on reducing reoffending and supports the development and adoption of United Nations standards and norms on combatting recidivism. These standards should be developed based on existing international human rights law and norms, including the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), and the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules).

ACLU Human Rights Program  
New York, USA  
[humanrights@aclu.org](mailto:humanrights@aclu.org)

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<sup>1</sup> ACLU, *Mass Incarceration*, Smart Justice, <https://www.aclu.org/issues/smart-justice/mass-incarceration> (last visited July 27, 2022).

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<sup>3</sup> ACLU, *How Incarcerating Women Fuels Our Mass Incarceration Crisis* (May 19, 2019), <https://www.aclu.org/issues/womens-rights/women-and-criminal-justice/how-incarcerating-women-fuels-our-mass-incarceration>.

<sup>4</sup> ACLU, *Written Submission of the ACLU on Racial Disparities in Sentencing Submitted to the United Nations Special Rapporteur on Minority Issues* (Nov. 18, 2021), available at [https://www.aclu.org/sites/default/files/field\\_document/21.11.18\\_aclu\\_racial\\_disparities\\_in\\_sentencing\\_submission\\_to\\_unsr\\_final\\_0.pdf](https://www.aclu.org/sites/default/files/field_document/21.11.18_aclu_racial_disparities_in_sentencing_submission_to_unsr_final_0.pdf).

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<sup>7</sup> Crystal S. Yang, *Does Public Assistance Reduce Recidivism?*, *American Economic Review*, 107 (5): 551-55 (2017), available at [http://www.law.harvard.edu/programs/olin\\_center/papers/pdf/Yang\\_920.pdf](http://www.law.harvard.edu/programs/olin_center/papers/pdf/Yang_920.pdf).

<sup>8</sup> ACLU, *Alternatives to Incarceration*, <https://www.aclu.org/issues/smart-justice/sentencing-reform/alternatives-incarceration#:~:text=health%20and%20housing.Services%20like%20drug%20treatment%20and%20affordable%20housing%20cost%20less%20and.%2C%20housing%2C%20and%20jobs%20programs> (last visited July 27, 2022).

<sup>9</sup> *Id.*

<sup>10</sup> Steven Belenko, Matthew Hiller, and Leah Hamilton, *Treating Substance Use Disorders in the Criminal Justice System*, National Library of Medicine (2013), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3859122/>.

<sup>11</sup> ACLU, *Overcrowding and Overuse of Imprisonment in the United States: Submission to the Office of the High Commissioner for Human Rights* (May 2015), <https://www.ohchr.org/sites/default/files/Documents/Issues/RuleOfLaw/OverIncarceration/ACLU.pdf>.



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- <sup>13</sup> ACLU, *Back to Business: How Hiring Formerly Incarcerated Job Seekers Benefits Your Company* (2017), [https://www.aclu.org/sites/default/files/field\\_document/060917-trone-reportweb\\_0.pdf](https://www.aclu.org/sites/default/files/field_document/060917-trone-reportweb_0.pdf).
- <sup>14</sup> *Supra* ACLU, note 12.
- <sup>15</sup> *Id.*
- <sup>16</sup> Kimberly Burrowes, *Can Housing Interventions Reduce Incarceration and Recidivism?*, *Housing Matters* (Feb. 27, 2019), <https://housingmatters.urban.org/articles/can-housing-interventions-reduce-incarceration-and-recidivism>.
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