

# REEVALUATING CRIME AND PUNISHMENT in South Carolina

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\*For the purposes of this report, the terms *violent* and *non-violent* were used based on the subjective understanding and definition of South Carolina law, not on the relative harm to the community.

\*For the purposes of this report, the terms *male* and *female* were used according to SCDC policy on classification, and do not necessarily correspond with an individual's gender identity.

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# EXECUTIVE SUMMARY

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America has reached a point of reckoning. In the nation that incarcerates far more people than any other on earth, there is a growing bipartisan consensus that the current predicament of overflowing prisons and exorbitant corrections costs is morally and fiscally unsustainable. Republicans and Democrats agree: Reforming the American prison system is an imperative.

The ripple effects of mass incarceration impact everyone. Seven percent of American children have had a parent incarcerated at some point in their lifetime. Decades of over-incarceration have taken an enormous toll on state budgets, even as spending on education, housing, and infrastructure has declined. And 95 percent of people in state prisons will be released back into communities, meaning we have a vested interest in making sure incarcerated people have access to the programs and skills they require to succeed upon release. In spite of that need, prison programming has been underfunded for decades, so whatever new skills individuals leave prison with are those they pick up on their own.

The seeds of mass incarceration were planted a half a century ago, beginning with President Richard Nixon's war on drugs. The federal government proceeded to pass three-strike, mandatory-minimum, and truth-in-sentencing laws that were replicated by the states. These draconian sentencing changes sent far more people to prison for far longer periods of time. The dramatic expansion of prison populations was followed by deep cuts in prison programs and services, resulting in the warehousing of human beings at a rate never before seen in history.

South Carolina's path mirrored the national trends, as the General Assembly enacted similar laws that filled state prisons and exacted steep budgetary costs. This spike in incarceration rates hit vulnerable Black and Brown communities the hardest; a disparity that continues to this day. Eventually, South Carolina legislators recognized that these trends were untenable, and passed sentencing reforms in 2010. These changes resulted in the closure of several prisons, financial savings, and the diversion of people convicted of low-level offenses from prison into alternative programs. Nevertheless, the 2010 reforms did not go nearly far enough.

Research has proven that lengthy sentences do not deter crime, have a far greater impact on minority communities, and keep people incarcerated well beyond the point at which they pose a threat to public safety. Today, our state prisons are filled with many thousands of elderly and medically vulnerable people as a result of sentencing policies enacted decades prior. Experts concur that the vast majority of people "age out" of crime, meaning we are allocating precious taxpayer dollars to keep people in prison into their golden years with little to no benefits for society.

The deadly Lee Correctional Institution uprising of April 2018 and the COVID-19 pandemic are two issues that dominate the criminal justice landscape in South Carolina today. Both highlight the harms created by the chronic staffing shortage within the South Carolina Department of Corrections (SCDC), and have resulted in countless preventable deaths, the cessation of life-altering prison programs,

and the termination of prison wages for the vast majority of incarcerated people. A lack of corrections officers has also led to an overreliance on the use of extended lockdowns to manage the prison population. Lockdowns deprive people of the chance to communicate with family members, take regular showers, have access to fresh air, and sanitize their surroundings, which is particularly important during a pandemic. Staffing shortages are also rampant in the medical and mental-health fields, meaning many people wait for months and sometimes years for life-saving treatment.

All of these factors make a compelling argument for sweeping changes within SCDC, and throughout our criminal justice system. If South Carolinians are going to turn the page on our past mistakes, we must begin by dismantling the financial incentives already in place that incentivize keeping our prisons full and prison staff employed. From there, we must embrace a wide range of reforms that have already been successfully implemented in other states. These include eliminating juvenile

life-without-parole sentences, ending the war on drugs, reforming our broken parole system, and enacting a variety of policies that reward positive behavior and participation in prison programs with the opportunity for earlier release. The result will be smaller, more manageable prison populations, and retrained individuals who can play positive roles in their communities upon release from prison.

The major responsibility for addressing the abysmal conditions in South Carolina prisons rests with the state legislature, which provides the bulk of the funding for its operation. The legislature reformed sentencing laws in 2010, keeping thousands out of our prisons. It can do so again. But everyone in the state—families of the incarcerated, journalists, individuals who simply pay the taxes that pay for the prisons—must recognize the deplorable conditions and the need to make deep, systemic reforms. South Carolina prisons are inhumane, but they don't have to remain that way.





# THE ARGUMENT FOR BOLD SENTENCING REFORM IN SOUTH CAROLINA

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In 2008 Jerome Laudman lay face down in a pool of feces and vomit in his cell in the solitary confinement unit at Lee Correctional Institution near Bishopville, S.C., for 11 days.<sup>1</sup> Moldy food trays were stacked near his naked, unresponsive body as prison guards refused to assess his medical condition or render aid. At age 44, Mr. Laudman was well known to the prison staff as an individual suffering from paranoid schizophrenia, intellectual disabilities, and bipolar disorder.<sup>2</sup> He had been sentenced to ten years in prison after he was convicted of armed robbery in 1998. After almost two weeks had passed, Mr. Laudman was finally transferred to a hospital and diagnosed with hypothermia. He died shortly thereafter.<sup>3</sup>

Sinetra Geter was serving two years for a probation violation in 2012 when the unthinkable happened.<sup>4</sup> She was 26 weeks along on her first pregnancy and expecting twins. After working a lengthy shift in the clothing plant at Camille Griffin Graham Correctional Institution in Columbia, she began to feel intense pain, and sought medical help.<sup>5</sup> A nurse on duty checked her vital signs and sent her away.<sup>6</sup> Ms. Geter continued to feel pain, and sought help several more times, only to be repeatedly rebuffed by medical staff.<sup>7</sup>

Ms. Geter's cries for help from prison staff went unanswered and she gave birth to her first child in the restroom of the prison, where the child died.<sup>8</sup> Medical professionals who examined the child at the coroner's office testified in a lawsuit later that the child could have survived if Ms. Geter had received medical attention sooner.<sup>9</sup> Ms. Geter gave birth to her second

child in the medical office after fellow incarcerated women grabbed a wheelchair and transported her there.<sup>10</sup> Thankfully, Ms. Geter's second child survived.<sup>11</sup>

Several months after the first cases of COVID-19 were diagnosed inside South Carolina prisons, the South Carolina Department of Corrections (SCDC) began transporting newly infected incarcerated men to an abandoned dorm at Lee Correctional Institution.<sup>12</sup> The men were placed in cells they described as covered in filth, and left largely to fend for themselves.<sup>13</sup> According to testimony from multiple individuals, the men, already sick and weakened by the virus, were forced to endure the extreme heat associated with South Carolina summers without relief due to broken air conditioners.<sup>14</sup> Many complained of broken toilets, infrequent meal delivery, and a dire lack of medical care.<sup>15</sup> Fellow incarcerated men were tasked with providing meals and checking on the status of those in quarantine, ostensibly because SCDC staff feared catching the virus themselves.<sup>16</sup>

The majority of the men sick with COVID-19 came to Lee with pre-existing medical conditions.<sup>17</sup> Many made repeated requests to medical staff to obtain their regular prescription medications for underlying conditions, but were denied.<sup>18</sup> As a result, a number of men went for weeks or more without critical medications to treat depression, diabetes, and serious heart conditions.<sup>19</sup> Their access to phone calls was severely curtailed and the men were allowed only infrequent showers in areas that had not been regularly cleaned.<sup>20</sup> One man who survived the ordeal shared

his feelings about being quarantined with other COVID patients at the dorm in Lee Correctional Institution, where a deadly riot had taken place two years prior: “We knew we were being sent there to die.”<sup>21</sup>

## Mass incarceration negatively impacts everyone

The plight of incarcerated people is a topic many in society find easy to ignore. Beyond the predictable explanations that individuals who have committed crimes should not be coddled, the desperate pleas for criminal justice reform are often drowned out by the cacophony of other demands on the public’s interest, such as the need for adequate teacher compensation or affordable health care.

Advocacy groups and families with loved ones in prison have been crying out for reforms to our sentencing laws and prison conditions for years, but their pleas have mostly gone unheeded. This is the case today, even as we continue to grapple with the many painful consequences of harsh sentencing laws enacted decades ago. Large portions of society simply do not prioritize sentencing reform, mostly because they believe these issues do not impact them.

And yet, it is clear that prison and sentencing policies have broad-reaching ramifications for everyone in society, whether it is through the sizeable number of children with incarcerated parents, the substantial budgetary costs, or the fact that most incarcerated people must eventually reenter society.

Statistics belie the belief that sentencing policies do not have broader effects. One in 14 children in the U.S., more than five million children, have had a parent in state or federal prison at some point in their lives.<sup>22</sup> These numbers spiraled upwards by 79 percent between 1991 and 2007, as the federal government and many states, including South Carolina, enacted harsher drug laws and mandatory minimum sentencing for a wide range of

offenses.<sup>23</sup> Why does this matter? Because children with a parent behind bars are far more likely to suffer severe emotional and social consequences, including difficulty in school, homelessness, and increased welfare and foster-care needs.<sup>24</sup>

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***“We knew we were being sent there to die.”***

**—Incarcerated men who tested positive for COVID-19  
and sent to Lee prison quarantine unit**

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In addition to these profound societal impacts, incarcerating substantial numbers of people for longer periods of time is also alarmingly expensive. According to the Bureau of Justice Statistics, the U.S. spends more than \$80 billion annually to incarcerate 2.3 million people.<sup>25</sup> One out of every five prisoners in the world is incarcerated in the U.S.<sup>26</sup> The average cost for states to incarcerate a single person is \$33,274 annually, exacting a huge toll on the economy.<sup>27</sup>

It is important to consider that at least 95 percent of all state prisoners will be released back into society at some point.<sup>28</sup> People returning with a felony conviction face an astounding array of hurdles after being segregated from society, including the difficulties of finding suitable employment and housing. Individuals leaving prison are branded with a “scarlet letter” as they attempt to navigate the approximately 45,000 collateral consequences enacted at the state and federal levels to further punish people with criminal records, including 708 laws in South Carolina alone.<sup>29</sup> Given that one in three adults in America has a criminal history, it is crucial for all of us to recognize the immense impact harsh sentencing laws have had on our nation.<sup>30</sup>



## HOW DID WE GET HERE?

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### **The era of harsher sentencing laws across America**

The seeds of mass incarceration were first planted in America in the 1960s and early 1970s, with the rhetoric of “law and order” and the launch of the war on drugs. In 1971 President Richard Nixon declared drug use “enemy number one,” dramatically increasing the number of federal drug-control agencies and pushing other anti-

crime measures.<sup>31</sup>

The rapid expansion of federal drug laws was soon mirrored at the state level. The federal government provided financial incentives for states to adopt more punitive criminal justice measures, sending many more people to prison for longer periods of time.<sup>32</sup> Prisons soon became overcrowded, necessitating the construction of a bevy of new prisons across the U.S., all facilitated by the federal funding stream promoting

these changes.<sup>33</sup>

President Nixon may have started the war on drugs, but President Ronald Reagan ushered in an unprecedented expansion of the anti-drug campaign.<sup>34</sup> The number of people convicted of nonviolent drug offenses soared from 50,000 in 1980 to more than 400,000 by 1997.<sup>35</sup> By the late 1980s the U.S. Congress and most state legislatures had adopted harsh measures including mandatory-minimum sentencing, particularly for drug offenses.<sup>36</sup> Mandatory-minimum sentencing laws removed judicial discretion in sentencing in favor of uniformly harsher punishments, one of the first steps in sending far more people to prison for longer periods of time.<sup>37</sup>

The Violent Crime Control and Law Enforcement Act of 1994 was the next piece of the puzzle, passed with bipartisan support in Congress and signed into law by President Bill Clinton. Commonly referred to as the “crime bill,” this act initiated the next wave of federal funding for states and localities to hire additional police, implement an array of tough sentencing laws, and erect new prisons and jails to cage those caught in the web of new laws.<sup>38</sup> The bill offered states \$12.5 billion

in federal funds in exchange for passing “truth-in-sentencing” (TIS) laws, which required individuals to serve at least 85 percent of their sentences before being eligible for release.<sup>39</sup> The Urban Institute found that by 1999, 42 states had TIS laws in place, including South Carolina, which vastly increased the numbers of people imprisoned across the U.S.<sup>40</sup> The majority of states also passed three-strikes laws, which significantly increased prison sentences for persons convicted of previous felony offenses, and punished a “third strike” with life in prison.<sup>41</sup>

By 2007 the prison rate in America was eight times as high as it had been in 1970.<sup>42</sup> This meteoric rise in the rate of imprisonment was not a function of rising crime rates; rather it was due to stricter sentencing laws.<sup>43</sup> Tough on crime initiatives not only dramatically increased the numbers of people sent to prison, they also extended the periods of punishment. America’s combined prison and jail populations grew from 330,000 in 1972 to 2.2 million in 2018<sup>44</sup> Today, America has approximately 5 percent of the world’s population, and 25 percent of the world’s prisoners.<sup>45</sup>



## SOUTH CAROLINA'S PATH

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### Historical background

South Carolina's path to mass incarceration largely mimicked the steps taken by the federal government and most other states. In the 1990s South Carolina abolished parole for many offenses and

adopted truth-in-sentencing measures for designated felonies. State lawmakers also enacted mandatory-minimum sentences, and together these laws began filling state prisons. The state's jail and prison populations exploded as a result.<sup>46</sup> Imprisoning so many people has been

extremely costly. South Carolina spent \$544 million, or 7 percent of its general fund on corrections in 2017 alone, and that does not include the additional funds the state spent on police, prosecutors, courts, and all other aspects of the criminal justice system.<sup>47</sup>

This overreliance on incarceration to remedy societal problems hit Black and Brown communities the hardest.<sup>48</sup> Black South Carolinians represent 26 percent of South Carolina's population, but comprise approximately 61 percent of the state prison population today.<sup>49</sup> As of 2017 the imprisonment rate of Black adults in South Carolina was more than five times the rate of whites.<sup>50</sup>

South Carolina's dramatic escalation in its state prison population peaked in 2009, at 23,486.<sup>51</sup> The spike in South Carolina's prison population drove a steep increase in corrections costs as well. These budgetary impacts were a result of state lawmakers deliberately choosing to fund policies that sent thousands more to prison rather than allocating additional resources for education, infrastructure, or health care, among other issues.

Even as the state legislature allocated more funds towards corrections overall to cover the spiraling costs, a series of SCDC directors concurrently dismantled the department's human-services and rehabilitation systems, eliminating many educational and vocational programs. At the same time, directors also cut corners on other budgetary items, resulting in reduced food quality, limited visitation rights, and increased use of lockdowns to manage the prison population.

These changes have had lasting ramifications for incarcerated people, as access to rehabilitation and vocational and educational programs has been severely curtailed. When people in prison lack access to programs that address substance abuse, teach life skills, or provide work experience, their likelihood of returning to prison upon release is greatly enhanced.<sup>52</sup>

In addition, SCDC ceased providing

funds for all incarcerated people to be able to purchase necessary items such as soap, toothpaste, and feminine-hygiene products. Today, SCDC provides indigent incarcerated people with a meager monthly supply of these necessities. Myriad reports from incarcerated people and their loved ones to the ACLU of SC have documented that the items provided to the indigent population are of poorer quality than the items available through the prison commissary, and are typically insufficient to last until the next provision. Going without cleaning supplies is inhumane in the best of times, but even more concerning during a global pandemic where personal hygiene is an important factor in preventing the transmission of a deadly virus. All of these factors, have created a sense of hopelessness among many incarcerated people, which has made everyone, prisoners and staff alike, less safe.

Incarcerated people in South Carolina are also serving much lengthier sentences than in the past, echoing the national trends. More than half of SCDC's prison population today is comprised of individuals serving lengthy sentences, ranging from nine years to life.<sup>53</sup> The average sentence length within SCDC has continued to increase from 13 years 8 months (164 months) in 2016 to 15 years 9 months (189 months) in 2020.<sup>54</sup> This includes many more individuals serving life-without-the-possibility-of-parole (LWOP) sentences.<sup>55</sup> Regardless of the data, "there's a trend to say there's really no sentence that's too long when it comes to violent offences," says Ryan King, a senior fellow at the Urban Institute's Justice Policy Center in Washington, D.C. "That's been a dominant force in our criminal justice system for over 40 years."<sup>56</sup>

In 2010 state legislators enacted several sentencing-reform measures that, in hindsight, were a mixture of positive and ineffective changes to the laws. The Omnibus Crime Reduction and Sentencing Reform Act of 2010 (S. 1154) reduced the

prison population by 14 percent, primarily by releasing people convicted of certain drug and property offenses.<sup>57</sup> As a result, SCDC was able to close several prisons and reduce expenditures.<sup>58</sup>

The bill included several other positive aspects, including: requiring the Parole Board to adopt evidence-based tools in order to ensure more objectivity in parole decisions and parole conditions; permitting terminally ill, geriatric, and permanently incapacitated incarcerated individuals to be presented to the Parole Board for earlier release; and directing SCDC, the South Carolina Department of Probation, Parole and Pardon Services (PPP), and the South Carolina Department of Motor Vehicles to collaborate to provide all incarcerated people with a valid photo-identification card upon release from prison. At the same time, lawmakers doubled down on ineffective measures, such as adding 24 crimes to the “violent crime” list, and expanding the sentencing range for many offenses. Lawmakers also drastically increased the potential penalties for individuals with some repeat driving offenses.<sup>59</sup>

Meanwhile, the percentage of correctional officers (COs) who left their jobs far superseded the decrease in the prison population. Staffing levels fell by an average of 30 percent during this time.<sup>60</sup>

Given the difficulty of the job, and the steep competition in hiring from other sectors of the economy, SCDC’s staffing challenges are not unique. Prisons across the nation have struggled for years to attract and retain enough employees to safely operate.<sup>61</sup> SCDC Director Bryan Stirling has repeatedly acknowledged that there is likely no way to hire the requisite number of COs that corrections experts say are needed. SCDC has been resolute in its attempts to attract employees, but those efforts have fallen far short of attracting the number of staff required to run a safe prison system.

Despite this failure, state legislators continue to focus on staffing, rather

than taking the more effective path of reducing the number of people caged in SCDC facilities. The time has long since elapsed for our leaders to rethink South Carolina’s harsh criminal justice system. These changes could finally pave the way for providing a humane environment for individuals remaining in the custody of SCDC.

### **Landmark lawsuit against SCDC on behalf of mentally ill individuals**

“The evidence in this case has proved that inmates died in the South Carolina Department of Corrections for lack of basic mental health care, and hundreds more remain substantially at risk for serious physical injury, mental decompensation, and profound, permanent mental illness.”<sup>62</sup> Judge Michael Baxley wrote those words in 2014 in his final order and judgment on behalf of the approximately 3,500 incarcerated people suffering with mental illness inside SCDC.<sup>63</sup> Sadly, seven years after that landmark decision, far too little has been done by SCDC to change these conditions.

South Carolina’s failure to protect incarcerated people experiencing mental illness has been clear for some time, drawing the attention of advocates such as Stuart M. Andrews Jr. of Columbia. Andrews began his legal career helping indigent clients, and was no stranger to the dire conditions inside South Carolina prisons. In addition to founding the healthcare group within the Nelson Mullins law firm, he created and led its nationally recognized pro bono program.<sup>64</sup>

In 2005 Andrews, along with the organization now referred to as Disability Rights South Carolina, filed a class-action lawsuit on behalf of incarcerated individuals suffering from serious mental illness, alleging substantial constitutional violations.<sup>65</sup> Even as the case slowly wound its way through the courts, SCDC persisted in minimizing the allegations for years

while fighting to have the case dismissed. Prison officials downplayed egregious incidents of abuse or neglect, labeling them “anecdotal” or “outliers.”<sup>66</sup>

In Judge Baxley’s powerful order, he wrote that there were far too few mental-health professionals working in the prisons, and those who were working in SCDC were not up to the task. “Meanwhile,” he added, “punitive prison policies, and poor communication, exacerbated the problems of the mentally ill.”<sup>67</sup> Judge Baxley added that in his 14 years on the bench, presiding over more than 70,000 filings, the case of *T.R. v. South Carolina Department of Corrections* was “far above the others, the most troubling.”<sup>68</sup> Judge Baxley identified six egregious failures by SCDC and staff:

- First, the mental-health program at SCDC is severely understaffed, particularly with respect to mental-health professionals, to such a degree as to impede the proper administration of mental-health services;
- Second, seriously mentally ill incarcerated persons are exposed to a disproportionate use of force and segregation (solitary confinement) when compared with non-mentally ill incarcerated persons;
- Third, mental-health services at SCDC lack a sufficiently systematic program that maintains accurate and complete treatment records to chart overall treatment, progress, or regression of incarcerated persons with serious mental illness;
- Fourth, SCDC’s screening and evaluation process is ineffective in identifying incarcerated persons with serious mental illness and in providing those it does identify with timely treatment;
- Fifth, SCDC’s administration of psychotropic medications is inadequately supervised and evaluated; and
- Sixth, SCDC’s current policies and

practices concerning suicide prevention and crisis intervention are inadequate and have resulted in the unnecessary loss of life among seriously mentally ill incarcerated persons.<sup>69</sup>

Judge Baxley underlined the need for the public to care about the horrific mistreatment of people with mental illness in our prisons. “This litigation does not happen in a vacuum,” Judge Baxley wrote. “What happens at the Department of Corrections impacts all of us.”<sup>70</sup> To Judge Baxley, turning a blind eye to such mistreatment was a damning indictment of society.

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***“This litigation does not happen in a vacuum... What happens at the Department of Corrections impacts all of us.”***

—J. Michael Baxley, Former South Carolina Circuit Court Judge

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Having gut-wrenching headlines splashed across newspapers in the state about mentally ill prisoners being systematically abused for decades gave the South Carolina Department of Corrections a black eye. Yet remarkably, it still took two years to reach a settlement with attorneys on how to proceed with court-mandated reforms.<sup>71</sup> Meanwhile, mentally ill people in South Carolina prisons continued to harm and kill themselves. The majority of these suicides were not only preventable, they were exorbitantly costly, as SCDC continued to settle wrongful death lawsuits that drained state coffers of millions of dollars.<sup>72</sup>

2018 was the deadliest year in the history of American prisons, and South Carolina played an outsized role in contributing to this horror with the deadliest prison uprising in 25 years at Lee Correctional Institution.<sup>73</sup> There were also a record number of suicides in South Carolina

prisons that year, twice the number in any year in at least a decade.<sup>74</sup> Prison suicides and homicides rose for at least five years in a row even as the prison population declined, and the abhorrent conditions inside SCDC likely contributed to the high death toll.<sup>75</sup>

Near constant use of lockdowns due to the chronic lack of adequate staff deprives incarcerated people of access to the outdoors, vital prison programs, and visitation with loved ones. Among the things that incarcerated people must withstand inside SCDC are: crumbling infrastructure, inedible food, a dire lack of medical and mental-health services, and infrequent access to showers.<sup>76</sup> “We are still constantly locked down,” said an incarcerated person at the Kershaw Correctional Institution in 2019. “We haven’t had showers in over 14 days. No air ventilation. No heat. Mold on the walls. No mental health. No medical. We are living a terrible life back here, and it is only getting worse.”<sup>77</sup>

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***“Oh, you ain’t dead yet? We thought you would be dead by now.”***

—Richard Allen Patterson, an incarcerated person with serious mental illness who testified in the landmark mental health lawsuit against SCDC, and later took his own life.

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For people living with mental illness in prison, perpetual lockdowns and a lack of mental-health treatment inside SCDC can become too overwhelming, leading some to take their own lives. Statistics can never adequately portray the agony suffered by individuals with serious mental illness imprisoned in SCDC. At age 20, Travis Steffey, was sent to Kirkland Correctional Institution in St. Andrews after being convicted of selling methamphetamines.<sup>78</sup> Twenty months later he took his own life by swallowing paper clips, an excruciating method of dying, according to the coroner in his case.<sup>79</sup>

The story of Richard Allen Patterson, one of the plaintiffs in the landmark class-action lawsuit brought against SCDC, captures the hell faced by incarcerated people with mental illness. Patterson did not have an easy life. He was diagnosed with bipolar disorder and began cutting himself at age 12.<sup>80</sup> He was sentenced to 20 years in prison for burglary at the age of 19.<sup>81</sup>

In 2012, he valiantly testified as part of a class-action lawsuit about his experiences in the state prison system as a person with mental illness.<sup>82</sup> He described a period of three consecutive years locked in a cell by himself, where he cut himself repeatedly, reopening old wounds and jamming screws into them.<sup>83</sup> He was often kept naked on the cold concrete floor, or was strapped naked to a restraint chair for hours.<sup>84</sup> He was gassed and beaten multiple times, and constantly belittled and demeaned by uncaring prison guards who refused to provide him with a blanket or a kind word.<sup>85</sup>

At one point, after staying awake for three days straight in the prison psychiatric ward, Patterson testified that he saw snakes in his hands and legs.<sup>86</sup> Unable to get relief, he “bit them out of his body.”<sup>87</sup> Shortly before he died by suicide in his prison cell, Patterson called his mother to report that he had been badly injured during a fight with correctional officers.<sup>88</sup> Rather than offering him medical assistance, Patterson told his mom, a guard yelled at him through the flap on his cell door: “Oh, you ain’t dead yet? We thought you would be dead by now.”<sup>89</sup> Just two days later, Patterson took his own life.<sup>90</sup> He was found hanging by his sheet, alone and dead in his cold cell.<sup>91</sup>

Today, while some progress has been made, SCDC has failed to comply with many key components of the 2016 settlement agreement.<sup>92</sup> In the eleventh report by the panel of experts appointed to oversee implementation of changes agreed to in the settlement agreement, the panel found SCDC to be lacking in compliance

with: timely treatment plans for mentally ill men and women, provision of medication, provision of regular showers and clean cells, regular safety checks, and much more.<sup>93</sup>

The panel specifically took issue with SCDC's continued noncompliance on practices such as the continuous observation of suicidal individuals, and the provision of clean, suicide-resistant clothing, blankets, and mattresses to the

prison population.<sup>94</sup> The Implementation Panel faulted SCDC for its failure to hire sufficient mental-health staff: "The need for adequate staff cannot be overstated and even with a modest increase in operations and efforts to increase clinical staff, the deficiencies have not been corrected to the extent of providing substantial compliance in the elements of the Settlement Agreement."<sup>95</sup>



## LEARNING FROM OUR PAST

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### **The power of hindsight: Longer sentences do not deter crime, are expensive, and destroy lives, families and communities**

Across America, we continue to live with the profound ramifications of the choices our political leaders made years ago regarding harsh punishment. Decades of research and evidence have illuminated the devastating impact of harsher sentencing laws in the destruction of lives and

families, and in the staggering amount of taxpayer dollars funneled towards mass incarceration.

One in seven people in American prisons is serving a life sentence, and more than two-thirds are people of color.<sup>96</sup> The number of people serving life sentences in the U.S. has tripled since 2000, even as life sentences are virtually unheard of everywhere else in the world.<sup>97</sup> “This is a sign of how unforgiving, and how unjust, the justice system is for young Black and

Brown offenders, said the attorney general for Washington D.C., Karl A. Racine.<sup>98</sup>

Unlike their federal counterparts in the U.S. Congress, state leaders understand the difficult policy tradeoffs that are required to ensure a balanced state budget. Every dollar spent on imprisoning an individual for driving with a suspended license means one less dollar is available to pave state roads or increase teacher salaries. These difficult choices become much more profound when it becomes clear that states have been funneling billions of dollars into prisons based on the faulty premise that this choice will keep society safe.

An overwhelming body of evidence collected since the 1970s has demonstrated that lengthy sentences do not deter crime.<sup>99</sup> Recent studies have concluded that longer sentences may even spur more crime.<sup>100</sup> This is thought to be the case because long periods away from society diminishes skills and employability, making the prospect of incorporating an individual back into the outside world ever more daunting.

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***“We have lost generations of young men and women, particularly young men of color, to long and brutal prison terms,”***

—VERA Institute of Justice

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Not only do lengthy sentences fail to deter crime, but they also have had long-lasting, negative impacts on communities, particularly low-income groups and communities of color where countless young people have been sent to prison. “We have lost generations of young men and women, particularly young men of color, to long and brutal prison terms,” acknowledges the Vera Institute of Justice.<sup>101</sup> African Americans comprise 13 percent of the U.S. population, yet account for 40 percent of those incarcerated.<sup>102</sup>

While the racial disparity between Black and white people sent to prison recently has been on the decline, the disturbing pattern persists.<sup>103</sup> Black people still spend longer time in prison than their white peers.<sup>104</sup> That distinction is even starker regarding time served for violent crimes, as the rate has grown almost twice as fast for Black people than for whites.<sup>105</sup>

Enacting laws that punish a wide swath of behavior with similarly lengthy sentences is counterproductive for other reasons. Researchers have learned that individuals tend to “age out” of criminal behavior.<sup>106</sup> There is now widespread consensus that involvement in criminal behavior begins in the mid-teens, sharply increases and peaks by around age 24, and then declines.<sup>107</sup> This outcome cuts across both racial and class lines.<sup>108</sup> Since the 1990s, we have understood that violence is not a static characteristic. It is complex, driven by factors that typically strongly diminish with age.<sup>109</sup> As such, increasingly lengthy prison sentences are counterproductive in promoting public safety.<sup>110</sup> As a whole, we are keeping far too many people in prison years and even decades beyond the point when social scientists deem it effective for public safety. People in their fifties and sixties are simply not the threats to society that they may have appeared when they were in their twenties.

The cumulative impact of harsh and lengthy sentencing regimes has resulted in a prison population across the U.S. that is much older, and much sicker, than in the past. The percentage of people in state prisons age 55 and older has more than tripled between 2000 and 2016; for the first time in 2016, older adults comprised a larger share of the state prison population than people aged 18 to 24.<sup>111</sup> The graying of America’s prison population is extremely expensive, amounting to two to three times the costs for younger people, to the tune of \$8.1 billion in 2015, according to Pew Charitable Trusts.<sup>112</sup> “Hallways are filled with rollators and oxygen tanks,” according

to Stephanie Post, assistant professor at the University of Louisville, who has extensively researched aging in prisons.<sup>113</sup> “You’ve got nursing assistants who are also incarcerated flipping people so they don’t develop bed sores.”<sup>114</sup>

Research tells us that the stress of incarceration takes a heavy toll on the human body. Each year spent in prison takes two years off an individual’s life expectancy.<sup>115</sup> This is largely because people in prisons and jails are disproportionately likely to have chronic health problems, including diabetes, HIV, mental-health and addiction issues.<sup>116</sup> The ramifications of this are severe for the U.S., which is the world’s largest jailer. These poorer health outcomes lower America’s overall life expectancy by five years; that is, U.S. life expectancy would have increased by more than five years, from 74.1 to 79.4 years, if not for mass incarceration.<sup>117</sup>

Perhaps the most powerful argument against the continued policy of lengthy sentences is illustrated by the dramatic decline in recidivism with age. Research tells us that older, ailing people are some of the least likely to commit crimes if released. According to the Vera Institute of Justice, arrest rates drop to 2 percent with people aged 50-65 years of age, and to almost zero for individuals over 65.<sup>118</sup>

This continued use of ineffective, overly harsh sentencing laws imposes steep financial costs on society. The punitive policies enacted in the 1980s and beyond have diverted enormous resources from alternative policies and programs that hold far greater potential for positively

impacting public safety.<sup>119</sup> The tab for incarcerating ever-larger portions of society for longer periods of time coincided with deep cuts to other valuable programs in the state budget. State spending on corrections grew by 324 percent between 1983 and 2016.<sup>120</sup> That is triple the rate that spending on education has increased.<sup>121</sup> Every year, taxpayers spend more than \$80 billion for state prisons.<sup>122</sup>

The human costs of incarceration are even more staggering than the financial toll. These are not simply statistics; lengthy incarceration affects living, breathing people with families. The lack of evidence finding that longer sentences deter crime or provide comfort to crime victims is reason enough to reevaluate current punitive sentencing policies. Add to these factors the grave harm these punishments cause to countless loved ones and communities left behind, and the remaining justifications for the status quo appear limited to political calculations.

The decision to lock up large numbers of people often hits children the hardest. One out of every 28 children in America has a parent behind bars today, and two-thirds of these parents are incarcerated for nonviolent offenses.<sup>123</sup> Seven percent of American children, or more than five million children, have had a parent incarcerated at some point in their lifetime.<sup>124</sup> The absence of a parent due to imprisonment causes social and economic damage to a child that can last a lifetime.<sup>125</sup> Sixty-five percent of families with a family member in jail or prison cannot meet even their basic needs for food and shelter.<sup>126</sup>



## SOUTH CAROLINA CASE:

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### First wave of reform

The impact of decades of spiraling corrections budgets has inevitably taken a toll on the finances of many states, including South Carolina. As public awareness of the social and fiscal costs grew, leaders across America began issuing a clarion call for a smarter approach to public safety. Former speaker of the U.S. House of Representatives Newt Gingrich criticized the policies South Carolina had in place in the 1990s and beyond: “About half of South Carolina’s prison population is being held for nonviolent offenses.... Such low-level violations, as well as certain nonviolent drug-related crimes, can be punished in other ways that aren’t as expensive as prison. We build prisons for people we’re afraid of. Yet South Carolina has filled them with people we’re just mad at.”<sup>127</sup>

Frustration with soaring corrections costs combined with overpopulated prisons to create an opening for South Carolina Senator Gerald Malloy to spearhead a call for reforming state sentencing laws. As a result, the Sentencing Reform Oversight Committee (SROC) was created in 2010,<sup>128</sup> comprised of members from the legislative, judiciary, and executive branches of state government.<sup>129</sup> SROC committee members and staff held public hearings, eliciting testimony from stakeholders throughout the criminal justice community.

Through the Justice Reinvestment Initiative, Pew Charitable Trusts reviewed state data and advised SROC members about how to achieve the maximum savings while improving public safety and reducing recidivism. This technical support laid the groundwork for important statutory changes.<sup>130</sup>

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***“About half of South Carolina’s prison population is being held for nonviolent offenses... Such low-level violations, as well as certain nonviolent drug-related crimes, can be punished in other ways that aren’t as expensive as prison. We build prisons for people we’re afraid of. Yet South Carolina has filled them with people we’re just mad at.”***

—Newt Gingrich, Former Speaker of the U.S. House of Representatives

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The Omnibus Crime Reduction and Sentencing Reform Act of 2010 passed in the General Assembly with overwhelming bipartisan support.<sup>131</sup> The law substantially reduced the number of people in state prisons by diverting many individuals convicted of low-level, nonviolent offenses,

such as drug and property crimes, into alternative programs, and by reducing the number of people returned to prison solely for technical violations of probation or parole.<sup>132</sup> As a result of the 2010 reforms, South Carolina was able to close six prisons, reduce the prison population by 14 percent, and save almost \$500 million, while also reducing the overall crime rate by 16 percent.<sup>133</sup>

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***“This approach is soft on the taxpayer and smart on crime.”***

— S.C. State Senator Chip Campsen, (R)

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A 2017 study by the Clemson Institute for Economic and Community Development found that the law resulted in 982 new jobs and a positive economic impact of \$37 million.<sup>134</sup> These accomplishments received national recognition and placed South Carolina on the map as an early champion of sentencing reform. State Senator Chip Campsen, a Republican member of the SROC in 2010, applauded the committee’s efforts: “This approach is soft on the taxpayer and smart on crime.”<sup>135</sup>

Overall, South Carolina deserves praise for being an early leader in sentencing reform efforts. The state benefitted from substantial cost savings, and many people, after conviction, were able to remain in their homes with their families as a result of diversionary programs for nonviolent offenses. But the legislation also included counterproductive provisions that increased sentences for individuals convicted of violent offenses, drilling down further on a policy that has repeatedly been shown to be ineffective and costly.<sup>136</sup> Thus, while South Carolina’s first major attempt at reforming its sentencing laws in 2010 had many positive aspects, much work remains.

Senator Gerald Malloy led a subsequent effort at enacting sentencing reform, starting in 2017, with the consulting assistance of the Pew Center on the States.<sup>137</sup> A re-constituted SROC listened to experts from Pew provide recommendations on safe and effective methods utilized by other states to reduce prison populations and costs while protecting public safety. The committee also heard testimony from solicitors, public defenders, families with loved ones in prison, parole officers, law enforcement, and victim advocates. But the process has thus far failed to gain traction.



## THE CRIMINAL JUSTICE ENVIRONMENT IN SOUTH CAROLINA IN 2021

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### **Recent events: The Lee uprising and COVID-19 in SCDC**

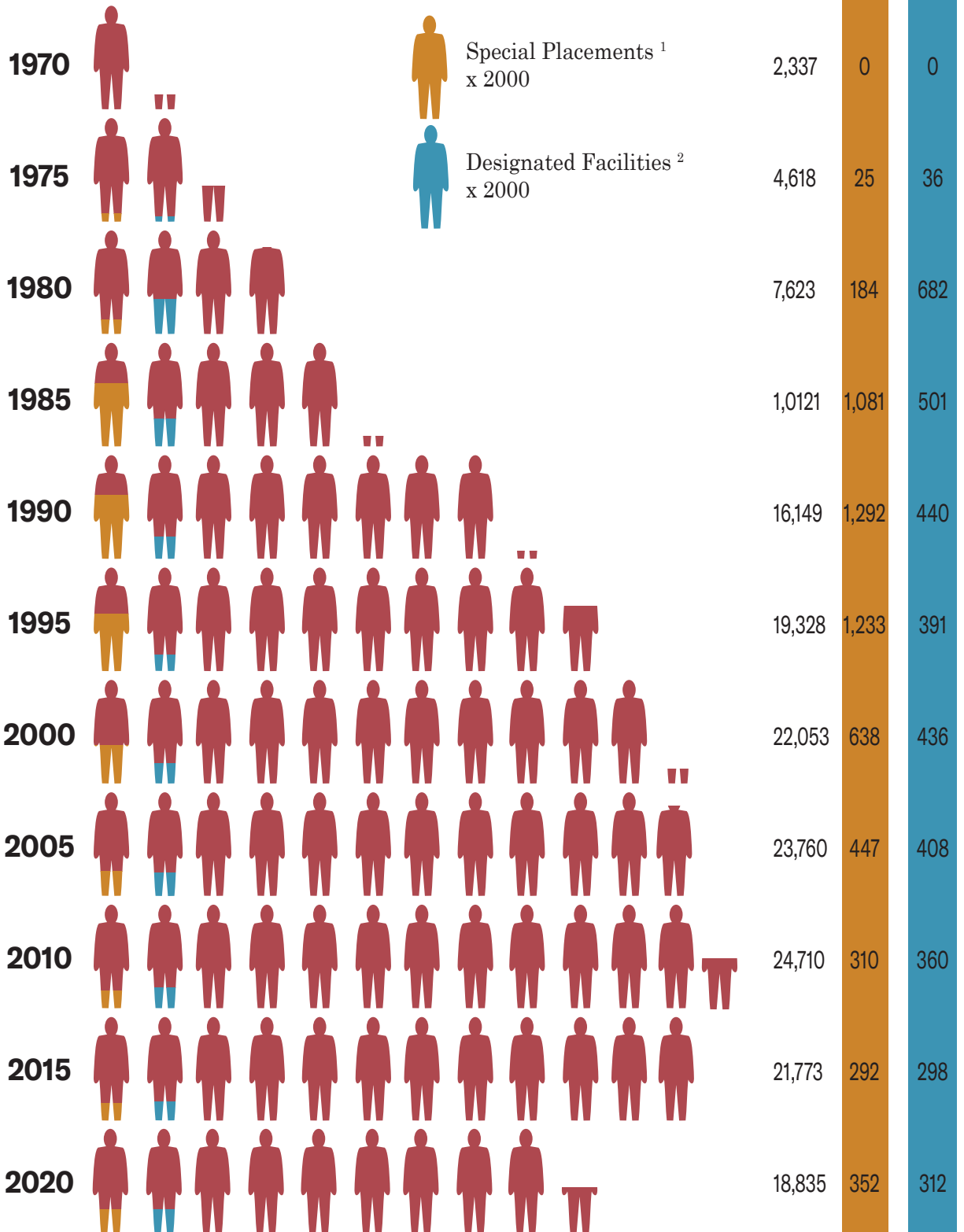
The Lee Correctional Institution uprising in 2018 and the COVID-19 pandemic illustrate the real-world harms that accompany South Carolina's failure to address its incarceration crisis.

Corrections experts, families with loved ones in prisons, and prison advocates have been sounding the alarm for decades about the dire need for relief from inhumane prison living conditions. Most of the time,

these cries for help have been downplayed or ignored altogether.

South Carolina has been unable to fulfill the acute staffing needs created by the state's sentencing laws. There are only two alternatives to resolve this dilemma: either SCDC must hire and retain a vastly larger staff of correctional officers as well as medical and mental-health staff within South Carolina prisons, or South Carolina policymakers must follow the lead of other states and substantially reduce the number of caged people.<sup>138</sup> Experience, and

# **Average Daily Incarcerated Person Population SCDJ Jurisdiction<sup>3</sup> (x 2000) | Fiscal years 1970-2020**



<sup>1</sup> This category of incarcerated persons does not take up bedspace in SCDJ facilities due to placement in diversionary programs. These programs include Extended Work Release, Supervised Furlough, and Provisional Parole. Special Placements include incarcerated persons assigned to hospital facilities, as well as Interstate Corrections Compact, and authorized absences. Special placements includes incarcerated persons serving South Carolina sentences concurrently in other jurisdictions-for FY 2018 this number averaged 266. <sup>2</sup> Suitable city, county, and state facilities have been designated to house State incarcerated persons as a means of alleviating overcrowded conditions in SCDJ facilities, and facilitating work at the facilities and in the community. <sup>3</sup> The jurisdiction count on this table does not include YOA parolees or incarcerated persons conditionally released under the Emergency Prison Overcrowding Powers Act (EPA)

the assessment of SCDC Director Bryan Stirling himself, confirm that the former option is not a viable one.

Two recent events have shaken the public's complacency towards prison issues, and at least temporarily shifted the media spotlight towards the dire conditions inside South Carolina prisons. The uprising at Lee Correctional Institution in April 2018 dominated the airwaves for months, both in South Carolina and across the country; it highlighted the greatest loss of life from a prison incident in the U.S. in the past 25 years and shattered the public's trust in SCDC's capability to keep incarcerated people, and the public, safe.<sup>139</sup>

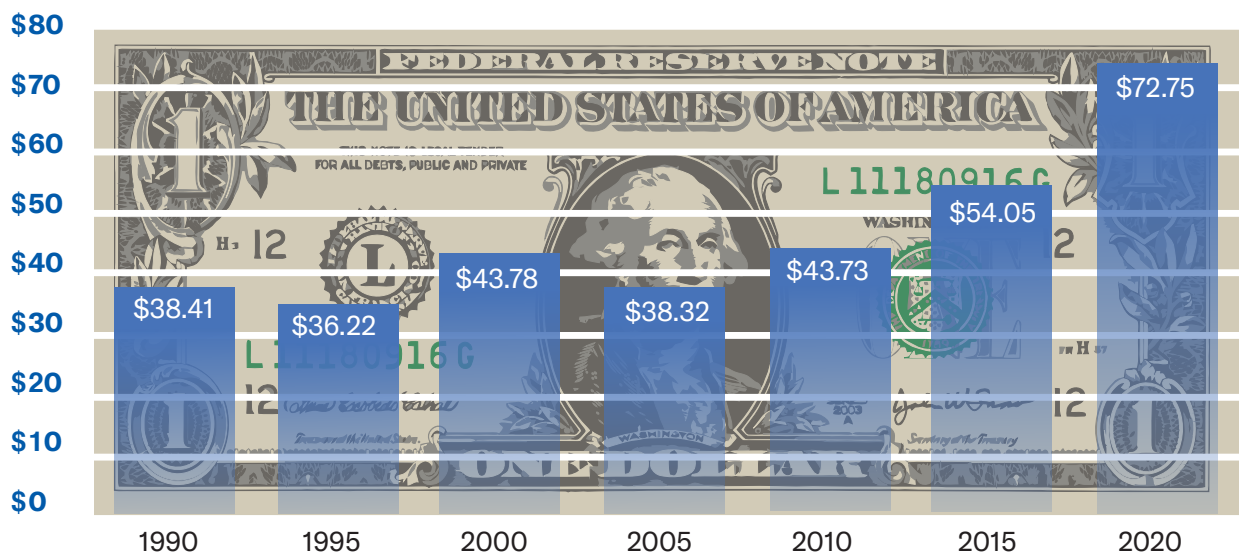
An exhaustive investigation of the riot by the Pulitzer-Prize-winning journalist Jennifer Hawes-Berry from the Charleston *Post and Courier* newspaper in December 2020 documented how gang warfare exploded at Lee prison, and continued over almost eight hours across three housing units, while SCDC waited for specialized tactical teams to arrive on the scene.<sup>140</sup> These gangs were emboldened by decades of understaffing and delayed maintenance, that resulted in faulty locking mechanisms that had gone unfixed since the 1990s.<sup>141</sup>

Considering all the major issues that had been lingering at Lee and other state prisons for decades, the uprising shouldn't have been a surprise; it was inevitable.

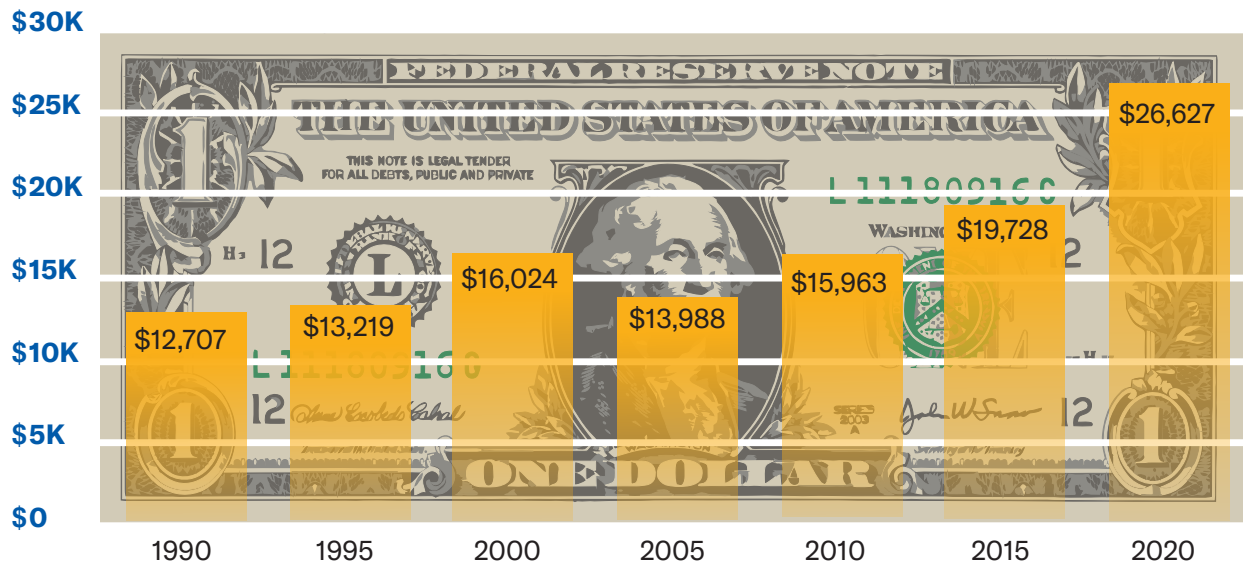
Likewise, the emergence of the COVID-19 pandemic in 2020-2021 had predictable consequences beyond the massive death toll. Nationally, COVID-19 infected more than 620,000 incarcerated people and correctional officers, killing more than 2,800.<sup>142</sup> The pandemic has resulted in at least 4,292 cases of COVID-19 in secure SCDC facilities, and the deaths of two employees and 40 incarcerated people as of March 2021.<sup>143</sup> When the virus made its way into South Carolina's prisons, it spread like wildfire in conditions that were ripe for rapid transmission.<sup>144</sup> The death toll inside SCDC steadily rose throughout the spring and summer of 2020, prompting reporters to expand their coverage, shining a spotlight on the longstanding dire conditions and glaring staffing shortages.<sup>145</sup>

Both the riot and the pandemic prompted the South Carolina legislature to establish a subcommittee, ostensibly to examine how the state could have managed the crises more effectively and reduced the loss of life. After the Lee riot,

### South Carolina Department of Corrections Daily Cost Per Incarcerated Person FY1990 Through FY2020



## South Carolina Department of Corrections Annual Cost Per Incarcerated Person FY1990 Through FY2020



the Legislative Oversight Committee moved up its review of the Department of Corrections.<sup>146</sup> Committee members spent over a year evaluating every aspect of the agency's operations, and welcomed testimony from experts and impacted members of the public. Regrettably, legislators in charge of the oversight process relied heavily on SCDC management to self-report current conditions, and chose to downplay the reporting of whistleblower prison employees and impacted families. The result, to no one's surprise, was recommendations for only modest reforms and marginal follow-through by SCDC.

### SCDC Population

SCDC's population has declined since its peak in 2009 when it housed 24,734 people.<sup>147</sup> In 2020 there were approximately 18,000 people in South Carolina prisons, the vast majority of whom were categorized by SCDC as males.<sup>148</sup> Even so, women represented the fastest growing segment of the prison population.<sup>149</sup> Black men were heavily overrepresented in SCDC as compared to their percentage of the

state population, constituting 62 percent of the men in prison.<sup>150</sup> The average age of prisoners hovered just under 40, with an average of a tenth-grade education.<sup>151</sup>

The top serious convictions that have resulted in individuals being sent to prison include: homicide, drugs, robbery, burglary, and sexual assault.<sup>152</sup> Approximately two-thirds of men and women in SCDC are serving non-parolable sentences, and 12 percent of men and 6 percent of women are serving life sentences.<sup>153</sup> The most common sentence length is between 10 and 20 years.<sup>154</sup> SCDC prisons are predominantly filled with men (76%) and women (58%) serving time for violent offenses.<sup>155</sup>

South Carolina's Department of Probation, Pardon and Parole (PPP) drastically reduced its revocation rate for technical violations of probation or parole as a result of the 2010 sentencing reform measures.<sup>156</sup> Even so, 17.8 percent of SCDC's prison population in 2020 was comprised of people whose paroles had been revoked while they were on community supervision.<sup>157</sup>

As more people were funneled into state prisons over the past decades,

the corrections budget expanded in a commensurate fashion.<sup>158</sup> South Carolina spent \$544 million of its general fund on corrections in 2017.<sup>159</sup> That equated to an average of \$72.00 a day for each incarcerated person, or approximately \$26,000 annually.<sup>160</sup> Corrections general-fund spending in South Carolina increased by 90 percent between 1985 and 2017.<sup>161</sup>

### **SCDC's lack of staffing is chronic, and unsustainable**

The dire conditions inside South Carolina prisons are a natural and predictable result of the nation's drive towards mass incarceration over the past half century. Millions of American lives, including far too many from South Carolina, have been irreparably scarred by the impacts of incarceration. These wounds were compounded by the difficulties faced when reentering society with a criminal record. South Carolina's leaders must acknowledge this pernicious pattern before they can begin to rectify it.

One issue is at the heart of SCDC's failure to prevent a massive prison uprising and its inability to mitigate substantial loss of life during a pandemic: a chronic lack of prison staff. SCDC Director Bryan Stirling concurs with the need to increase hiring, but has been unable to accomplish that goal through incremental salary raises alone. Research leaves no doubt that adequate staffing is essential to the safe, effective management of prisons. This is true both with regard to individual conduct inside prisons, as well as preparing people for life outside prison walls.<sup>162</sup>

South Carolina's chronic prison-staff shortage impacts every aspect of prison life, from the inability to provide adequate security, to the dearth of educational, vocational, and re-entry programs, and insufficient delivery of medical, mental-health, and addiction-recovery services that, in turn, affect the stability and security of incarcerated people and staff

alike.<sup>163</sup>

A lack of sufficient staff also makes it much more difficult to ensure that incarcerated people have regular visits from loved ones. Research in recent years has demonstrated that maintaining ties with loved ones is a key factor in improving release outcomes and reducing recidivism. When prisons lack the staff to ensure even basic security, visitation policies are often curtailed. This can escalate tensions within prison systems between guards and the incarcerated population.

### **Issues exacerbating security concerns for understaffed corrections system**

Security inside state prisons is also negatively impacted by a mixed population of incarcerated individuals, some indigent and others with access to funds to purchase commissary items that can dramatically improve their quality of life while serving time. This disparity between the haves and the have-nots demoralizes those without resources, creating an environment where the indigent must barter or perform tasks for others just to get the funds to purchase basic necessities.<sup>164</sup> At the same time, it places a bulls-eye on the backs of individuals with plentiful funds, exacerbating security concerns.<sup>165</sup>

On top of these impediments, many incarcerated people inside SCDC see no hope of release regardless of their behavior or program participation. The South Carolina Parole Board routinely denies parole for the vast majority of people with violent convictions, even for individuals with stellar behavioral records and leadership qualities.<sup>166</sup> This severely diminishes the hope, and thus motivation, of individuals who see no clear path to be granted release. Others serving so-called "no-parole" sentences despair when they witness individuals exemplifying positive behavioral records being deprived of the possibility of early release, and treated the same as those causing constant trouble.

## How bad is the staffing shortage?

In order to determine the breadth of SCDC staffing deficiencies, SCDC Director Bryan Stirling requisitioned a detailed report. Director Stirling retained Tom Roth, a prison security expert and former Illinois prison administrator, to conduct a comprehensive study of the SCDC security staffing needs.<sup>167</sup> The results of this damning report were released to the director just weeks prior to the deadly Lee uprising in April 2018. The report documented that the number of correctional-officer staff positions approved by the legislature was far less than the number actually needed to meet applicable national standards and to provide a safe correctional setting for staff and prisoners alike.<sup>168</sup> Of particularly important consideration: job vacancy rates at Level 3 institutions.<sup>169</sup> Those prisons, such as Lee, are categorized as higher-security facilities, and require the lowest staff-to-prisoner ratios.

For the thirteen prisons reviewed in Roth's report, SCDC should have had 4,042 correctional officers in place to provide a safe environment.<sup>170</sup> As of January 2018 roughly half of the recommended security staff was assigned to these facilities.<sup>171</sup> In fact, half of the thirteen institutions were operating with fewer than 50 percent of the security personnel needed, and none of the facilities operated at higher than 62 percent.<sup>172</sup>

In practical terms, having far fewer staff than experts recommend results in a series of negative consequences. Under these circumstances, prison management is often forced to deviate from established staffing plans and use ad hoc measures.<sup>173</sup> As a result, prison guards are assigned to multiple posts during a single shift, resulting in missed security checks, unguarded loading-dock areas, unheeded medical emergencies, and, most alarmingly, unmonitored prison units for extended periods of time. "There is simply not

enough security staff assigned to effectively meet the established responsibility on a consistent basis," wrote Roth.<sup>174</sup> This is not only dangerous, it results in higher operating costs, fewer programs and services for incarcerated individuals, and higher rates of workplace stress and turnover.<sup>175</sup>

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***"When this occurs," said Roth, "staff spend a greater portion of their day responding, reacting, and recovering and less time preparing, preventing and providing."***

—Corrections expert and former Illinois prison warden Tom Roth

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In addition, chronic understaffing can lead to an increase in contraband items in the prisons, increased rates of attempted escapes, and spikes in assaults.<sup>176</sup> Director Stirling has worked with the state legislature to achieve significant raises for prison employees in recent years, yet the prison salaries still lag behind those at many county jails.<sup>177</sup> Many prison staff have procured contraband items such as cell phones or illegal drugs and brought them inside the prison walls for payment in order to augment their salaries.<sup>178</sup>

A spike in the rate of serious assaults, both on prison employees and on other incarcerated people, has been enabled by a lack of staff to oversee a safe environment.<sup>179</sup> From 2015 to 2018 serious assaults on SCDC employees almost quadrupled from 12 to 46 incidents.<sup>180</sup> Meanwhile, 135 incarcerated people reported being injured through assaults by their peers in 2017, triple the number in 2015.<sup>181</sup> All of these factors combine to make existing prison staff fearful, and reluctant to continue working for SCDC. Even SCDC conceded in a 2018 report that they were not operating with sufficient staff to reach

“safe levels.”<sup>182</sup>

According to Roth, there was no period between 2011 and 2017 when staffing levels were considered optimal.<sup>183</sup> Most correctional officers (CO) saw their job responsibilities expand to a point where only basic duties were being completed.<sup>184</sup> “When this occurs,” said Roth, “staff spend a greater portion of their day responding, reacting, and recovering and less time preparing, preventing and providing.”<sup>185</sup> The gravity of the challenges facing SCDC’s current workforce, and the unlikely prospect of being able to hire sufficient staff to meet these challenges, leads Roth to believe that South Carolina needs to dramatically reduce the number of incarcerated individuals housed in its state prisons.<sup>186</sup>

### High rate of staff turnover, and inability to fill positions

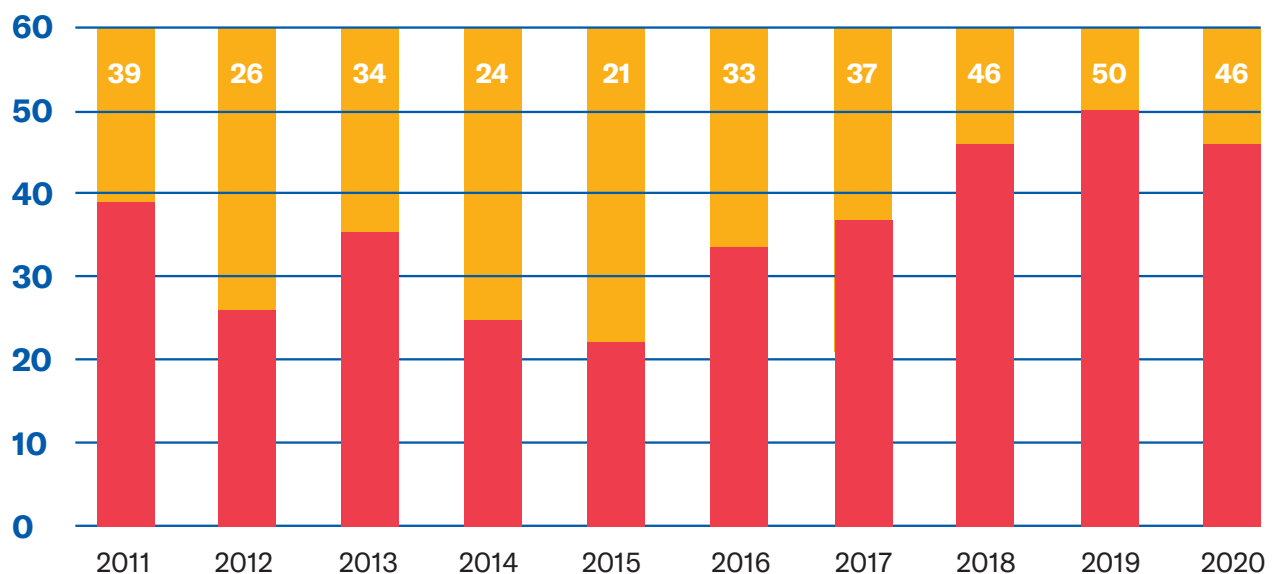
As staffing numbers have declined, SCDC has predictably found it even more difficult to hire and retain employees to bridge the gap.<sup>187</sup> The safety concerns caused by a diminished workforce perpetuate the problem, making it ever

more difficult to entice people to work in a relatively low-paying and dangerous vocation. This vicious cycle is especially pernicious when there is a strong economy and low unemployment rates.

A high turnover rate contributes to SCDC’s inadequate staffing. According to University of South Carolina Criminal Justice Professor Dr. Hayden Smith, South Carolina’s rate of correctional officer turnover of 34 percent in 2009 was more than double the national average.<sup>188</sup> More than half of the correctional officers polled in a 2009 study conducted by Dr. Smith indicated they frequently thought about leaving their jobs, primarily due to low pay and poor benefits, lack of decision-making autonomy, dangerous work environments, and the lack of career mobility.<sup>189</sup>

The issue of high turnover is compounded by the legislature’s unwillingness to approve the necessary funding required to make corrections positions desirable to potential employees.<sup>190</sup> The legislature approved modest pay increases to fill the more than 600 vacant prison-staff positions in 2018, yet a large portion of these jobs remain

### Serious Assaults on Employees by Incarcerated People | FY 2011 Through FY 2020



unfilled.<sup>191</sup> According to Director Stirling, legislators have provided funding for just 285 of the 612 front-line officers needed inside SCDC prisons, and SCDC employees have been leaving in droves over the past decade.<sup>192</sup> As a result, the department has persistently been unable to fill the more than one in three jobs that remain vacant. SCDC perpetually requires staff to work overtime under stressful conditions.<sup>193</sup>

Given South Carolina's budgetary restraints, it is highly unlikely that the legislature will fund prison staffing at the level required to satisfy corrections experts' recommendations. Historically, the state has been even more reluctant than its southern neighbor states to allocate state funding towards corrections. According to the Southern Legislative Conference, South Carolina for years has spent less per incarcerated person than most other states, ranking near the bottom, alongside Alabama, Louisiana, and Mississippi.<sup>194</sup> Even former prison director Jon Ozmint expressed disappointment with the state's record of underfunding SCDC. "You need to fund the agency at a level that takes them out of the bottom 10 in terms of funding in the nation," he said.<sup>195</sup> "And then you need to give them enough money to feed and provide health care for inmates at a reasonable level."<sup>196</sup>

### Staffing effects on security

Lack of adequate staffing has had deadly consequences, as evidenced by the deadly Lee uprising in April 2018. Conditions were ripe for violence for some time prior to the loss of life at Lee. Correctional officers' persistent use of lockdowns to manage the prison population in light of staffing shortages took a toll on morale, depriving incarcerated people of visits with family and loved ones, fresh air and the outdoors, access to medical and mental health care, time in the law library to research caselaw, and much more.

On April 15, 2018, seven incarcerated

men paid the ultimate price for the state's failure to protect people housed within SCDC.<sup>197</sup> Another seventeen men were hospitalized with serious injuries caused when they were attacked for hours with makeshift knives as correctional officers stood outside the prison for seven hours, waiting for tactical assistance to arrive.<sup>198</sup> During much of that time, injured men were left alone to suffer and die, pleading for medical assistance and protection from guards who were waiting for backup to safely enter the scene.<sup>199</sup>

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***"There are cell phones in every prison in America," Bailey told Crimesider. "There's something else going on here too. That something else," Bailey asserts, "is a desperate shortage of correctional officers."***

— *Post and Courier* reporter Steve Bailey

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Director Stirling has asserted that the Lee riot, and the overall increase in violence within the state's prisons, is primarily attributable to the high number of contraband cell phones being used inside prison walls.<sup>200</sup> *Post and Courier* reporter Steve Bailey has been tracking and documenting the drastic uptick in violence inside South Carolina prisons for years, and disagrees with Stirling's assessment of the root cause. Serious assaults have risen by 68 percent since 2013, and the number of homicides in prison is also significantly higher over the same period.<sup>201</sup> "There are cell phones in every prison in America," Bailey told Crimesider.<sup>202</sup> "There's something else going on here too." That something else, Bailey asserts, is a desperate shortage of correctional officers.<sup>203</sup>

The implementation of sentencing reforms in 2010 reduced the statewide prison population by more than 3,000

people through 2017, as part of a nationwide trend toward redirecting nonviolent offenders to diversionary programs such as addiction treatment and mental-health resources.<sup>204</sup> In spite of this reduction, SCDC has been unable to maintain the appropriate staffing levels required to safely house the remaining population.

## Proliferation of gangs

Another consequence of staffing shortages is that prison gangs have grown dramatically in size and power to fill the vacuum created by SCDC's failure to protect the people in its care. Prison gangs have proliferated within South Carolina prisons, just as they have throughout the nation in recent decades.<sup>205</sup> This phenomenon of gangs spreading into prisons corresponded with the meteoric rise in prison populations in the 1980s.<sup>206</sup> Gang rule provided the order and safety that prison management could not.

Yet this was not a foregone conclusion. Some states, including Connecticut, Missouri, and California, have dramatically reduced gang affiliation and recidivism by placing people in environments where violence was not the norm, and providing them with the tools to transition to a more normal life upon re-entry into society.<sup>207</sup>

Countering the power of gangs today, some experts contend, would require states to send fewer people to prison, so security is more manageable.<sup>208</sup> In addition, state legislatures need to open up the prison economy, making telephone calls and amenities available at reasonable prices, thereby diminishing a prison black market and the grip of gangs on underground sales of cell phones and other contraband items.<sup>209</sup>

Research shows gang members commit both violent and nonviolent offenses in prison at higher rates than those not affiliated with gangs.<sup>210</sup> The bare-bones staff working in South Carolina prisons struggle

with managing the behavior of gangs inside the walls, while at the same time protecting the safety of non-gang members.<sup>211</sup> Gang members attack one another and non-gang-affiliated prisoners with impunity.<sup>212</sup> "People get extorted, jumped, bullied, stabbed, hit with lock-in-socks," said Michael Hall, who was incarcerated in SCDC. "And [officers] are well aware of those problems and they know who's doing everything and turn a blind eye and a deaf ear ... to all of it because it's prison."<sup>213</sup>

These attacks have escalated as gangs first gained a foothold and have now taken over the state prisons.<sup>214</sup> Stan Burt, the former warden at Lieber Correctional Institution, has an explanation for that evolution: "People have gone to the gangs for protection or whatever. That's because there is no staff."<sup>215</sup>

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***"People get extorted, jumped, bullied, stabbed, hit with lock-in-socks," said Michael Hall, who was incarcerated in SCDC. "And [officers] are well aware of those problems and they know who's doing everything and turn a blind eye and a deaf ear ... to all of it because it's prison."***

—Michael Hall, formerly incarcerated in SCDC

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Prison experts concur that many South Carolina prisons today are run by gangs, not correctional officers.<sup>216</sup> The chaos inside prisons, such as Evans, a Level 2 prison in rural Bennettsville, S.C., was vividly described by a mother of an incarcerated man who shared her story with *The Post and Courier* in 2020.<sup>217</sup> Visitation was often canceled when Evans was put on lockdown mode due to violence.<sup>218</sup> The mother described gangs terrorizing and intimidating vulnerable, weaker individuals

such as her son, forcing his parents to pay extortion money to prevent him from being beaten or killed.<sup>219</sup> This mother reported the extortion to prison authorities, begging repeatedly for her son to be transferred to another institution, but to no avail.<sup>220</sup> Before making one of the payments, she asked one of the correctional officers what he would do if his child had been in prison. His response: “My son wouldn’t be in prison.”<sup>221</sup>

Typically, SCDC tries to maintain security by moving known gang members to Restrictive Housing Units (RHU), isolating them from the general population and punishing them by eliminating visitation and other benefits. Nationwide, wardens have long embraced this approach of isolating and punishing gang-related misconduct. Various statewide studies bolster this approach, with Texas reporting a reduction in homicides and assaults through this strategy and Arizona seeing an overall 30 percent decrease in prison misconduct when they isolated gang members in RHUs.<sup>222</sup>

But a strong argument for alternatives to “suppression” strategies has recently gained favor, as these policies may actually enhance institutional safety at the cost of long-term public safety.<sup>223</sup> The risk of relying on these isolation tactics is that these prisoners not only suffer the loss of social and interpersonal skills while in isolation, they also are limited to contact with only individuals who have also been affiliated with gangs or exhibited violent behavior.<sup>224</sup>

After the deadly Lee prison riot, SCDC officials tried a different approach to isolate negative behavior. They shipped 48 individuals, identified by the department as the most violent and “problematic” gang-affiliated men, to an out-of-state private prison in Tutwiler, Mississippi.<sup>225</sup> But the director of California’s Prison Law Office, Donald Spector, argues that isolating problematic men in RHUs or sending them to out-of-state prisons has not been

effective.<sup>226</sup> He recommends a different approach: closely monitoring integration, coupled with incentives and tools to help prisoners leave gang life.<sup>227</sup>

## **Lockdowns as a management tool**

Chronic understaffing has also led SCDC to over-rely on lockdowns as a means to control the prison population. On September 20, 2018, five months after the infamous Lee prison riot, 25.5 of 37 prison units in South Carolina, or more than three-quarters, were still on lockdown status.<sup>228</sup> That means thousands of people were confined to their cells for up to 23 hours a day, typically getting just one shower per week, for at least six months. The overuse of lockdowns continues to this day, because the department simply lacks the workforce to allow incarcerated men and women the time outside of their cells that is so necessary to maintain prisoner health, encourage participation in vital prison programs, facilitate employment opportunities, and allow for families to see their loved ones.

Lockdowns have serious consequences. According to a U.S. Department of Justice report, keeping people confined to their cell for 23 hours a day is akin to solitary confinement, a process the DOJ guidelines say should be used “rarely, applied fairly, and subjected to reasonable restraints.”<sup>229</sup> The report added that extended periods of lockdowns, such as the ones in South Carolina after the Lee riot, can cause serious, long-term harm, and should never be the default practice. A Harvard study of hundreds of prisoners in solitary confinement found that one-third of the subjects were “actively psychotic and/or acutely suicidal.”<sup>230</sup> The study also determined that the use of solitary confinement can cause hallucinations, panic attacks, paranoia, diminished impulse control, hypersensitivity to external stimuli, and difficulties with concentration and memory, among other negative

repercussions.<sup>231</sup> In addition, the tactic is associated with a much higher rate of suicides and self-harm.<sup>232</sup>

Locking up incarcerated people by themselves for 23 hours a day for months on end, as has also long been the practice at SCDC, has been shown to increase the likelihood of reoffending, and can cause an increase in violence.<sup>233</sup> According to James John Abernathy, an incarcerated man interviewed by *The State* newspaper reporter Emily Bohatch: “If you keep someone in a cell everyday all day, feed and talk and treat them like an animal, yes, they get aggressive, frustrated and may seem like an animal.”<sup>234</sup>

The ACLU has received countless reports over the past several years of the continued overuse of lockdowns as a management tool. In lieu of sufficient staff, SCDC continuously relies on lockdowns with large portions of the prison population. It takes staff to supervise the movement of incarcerated people to the cafeteria, to recreation, to prison programs, to work, and to medical and mental-health appointments. Without sufficient staff, incarcerated individuals are often kept locked in their cells for extended periods of time. The ACLU has received many reports of lockdowns that have continued for a year or more in many prisons, a clear violation of constitutional rights.

### **Lack of staffing: Effects on medical, mental health, and addiction services**

Lack of sufficient security staffing also greatly impacts South Carolina’s ability to provide necessary medical, mental-health, and addiction-related services. Without proper staffing, such essential services cannot be treated in a manner that meets constitutional standards. Moreover, the failure to meet such standards destabilizes the institutional security.

Since the large-scale de-institutionalization of the mentally ill across America started in the 1980s, the

prison system has largely become the de facto repository for those struggling with mental illness. Around the same time, strict drug laws began to be implemented, punishing addicts with prison time rather than treatment.

South Carolina has been unable to adequately treat the large influx of psychiatric and addicted patients who have flooded its prisons without adequately trained and plentiful staff. In spite of the successful lawsuit brought against SCDC for the mistreatment and neglect of mentally ill prisoners in 2014, “mental health care remains woefully inadequate,” according to reporter Steve Bailey.<sup>235</sup> As a result, corrections officers rely too heavily on frequent lockdowns and solitary confinement, further exacerbating these issues.

In a report dated July 2018, the panel of experts monitoring compliance with the SCDC mental-health-litigation settlement agreement found, as they have in virtually every report they have prepared since beginning to monitor compliance in May 2016, that the chronic shortage of staffing undermines the department’s ability to achieve compliance with the constitutional standards reflected in the Settlement Agreement.<sup>236</sup> Excerpts from the report include the following:

- “The entire SCDC system continues to be understaffed by security and mental health, medical and nursing staff.” July 2018 Report, p. 1.
- “The IP [Implementation Panel] has consistently reported our grave concerns regarding the inadequate staffing at SCDC. This is a long-standing problem, and as with many systems, it has adversely impacted mental health care and resulted in lockdowns/segregation and uses of force, including chemical and physical restraints.” *Id.* at 2.
- “Despite efforts to recruit and retain security staff (acknowledging salary increases and intense recruitment



*Incarcerated people often wait months or years for necessary medical treatment.*

activities), the security staffing remains inadequate at supporting the basic policy and procedural requirements.” *Id.*

- “The SCDC increased dollars for security staffing has not been successful in reducing correctional officer vacancies.” *Id.*
- “On duty correctional staff for day and night shifts are routinely less than 50 percent of the authorized staffing. Shortages are at critical points for a number of institutions.” *Id.* at 3,

- “SCDC is highly unlikely, if not completely unable, to achieve substantial compliance with the Settlement Agreement and the provision of constitutionally adequate and required mental health care without major and consistent increases in staffing and resources and/or major reduction in the number of people housed in SCDC facilities.” *Id.*
- “Even prior to the agency-system wide lockdown, most Level 2 and 3

institutions are locked down from 7p to 7a daily." *Id.*

- "Correctional officer staff vacancies prevent SCDC from providing even the basic services in the Restrictive Housing Units and General Population." *Id.*

State Sen. Karl Allen has received numerous letters from incarcerated people describing the poor quality of medical care inside South Carolina prisons. He explains: "Specifically it goes into medical treatment or lack thereof of medical attention for the inmates when they have a health occurrence."<sup>237</sup> Lawsuits are another way the public learns of the lack of adequate medical care. Incarcerated individuals at McCormick Correctional Institution filed suit alleging that after officers quelled an uprising, they locked down an entire unit—including all of those who had not taken part in the uprising—without food or medicine for 2.5 days, nearly causing one man to slip into a diabetic coma.<sup>238</sup>

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***"If you have a chronic condition and you're in the SCDC system, you are in a lot of trouble because they just can't handle you"***

—Carter Elliott, an attorney representing people incarcerated in SCDC

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SCDC has been severely criticized for its subpar record of providing medical and mental-health care by advocacy groups, lawyers representing incarcerated people, and individuals with loved ones in South Carolina's prisons. *The State* newspaper reporter Emily Bohatch reviewed hundreds of malpractice and wrongful death lawsuits against SCDC alleging inadequate medical care.<sup>239</sup> As of 2018, at least 56 percent of the state's prison population suffered from a diagnosed medical condition, ranging from diabetes to asthma or cancer.<sup>240</sup>

At that time, just 11 doctors and 221 nurses were employed to manage approximately 19,000 incarcerated people.<sup>241</sup> The department has since hired two additional physicians and transported incarcerated people to outside doctors approximately 10,000 times during the fiscal year.<sup>242</sup> Bohatch's analysis documented issues with misdiagnoses leading to terminal illness, denial of life-saving medications, excessively long waits for basic and necessary medical appointments, denial of medical or mental-health care altogether, and a chronic shortage of medical staff to manage the prison population.<sup>243</sup> The ACLU of South Carolina receives regular correspondence confirming that these allegations are commonplace.

When Julius Allen Munn was 13 years old, he was shot in the stomach, necessitating the removal of his pancreas.<sup>244</sup> As a result, he became diabetic, requiring him to regularly monitor his blood sugar. When he entered SCDC, he was provided with test strips to test his sugar three times a day, but in 2003 he was told the department no longer had the funds to provide the strips.<sup>245</sup> Munn offered to pay the approximately 10 cents per strip to cover the supplies that were necessary to keep him alive, but was rebuffed.<sup>246</sup>

Not surprisingly, he soon suffered diabetic attacks, slipped into repeated comas, and eventually lost his vision as a result of unregulated diabetes.<sup>247</sup> According to the attorney he hired to represent him in a lawsuit against SCDC, Aaron Mayer of Charleston, Munn was then housed in a unit with dangerous, gang-affiliated men.<sup>248</sup> "If you have a chronic condition and you're in the SCDC system, you are in a lot of trouble because they just can't handle you," said Carter Elliott, an attorney based in Georgetown, who represents many incarcerated people.<sup>249</sup> As has been said many times before, a prison sentence should never mean a death sentence.



## THE ARGUMENT FOR SWEEPING CHANGE WITHIN SCDC

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### The dire need for prison programs

There is a strong relationship between quality prison programming and reductions in disciplinary infractions inside prison as well as decreased rates of recidivism. As South Carolina's addiction to caging people increased during the 1990s, SCDC eliminated most of its valuable programs. This left people in overcrowded, understaffed correctional institutions with little hope of preparing for re-entry by improving their educational levels and skills. Today, SCDC program management recognizes the need to augment educational, vocational, and soft-skills programs, but lacks the resources and workforce to achieve that goal.

### Educational programs reduce prison violence and recidivism

Long before they are sentenced to prison, many South Carolinians encounter

social problems that limit their future options. They suffer from a lack of universal access to quality education, affordable housing, and livable wages. South Carolina is the fifth-deadliest state in the nation for women.<sup>250</sup> It ranks 43<sup>rd</sup> on education, and 36<sup>th</sup> on health care according to *U.S. News and World Report*.<sup>251</sup> On virtually every crucial measure, the state ranks near the bottom on desirable quality-of-life issues, and near the top of national rankings for negative factors. Given this record, the importance of providing educational programming in prisons is paramount.

The impact of correctional education has been studied extensively over the past several decades. The most prominent meta-analysis was conducted by the RAND Corporation in 2014, showing that people who participate in any kind of educational program behind bars—from remedial math to vocational auto shop to college-level courses—are up to 43 percent less likely

to re-offend and return to prison.<sup>252</sup> They also appear to be much more likely to find a job after their release, along with the social stability that comes with a job. Every dollar invested in correctional education, RAND concluded, saves nearly \$5.00 in re-incarceration costs—and that is over just three years.<sup>253</sup> Expanding prison programs is one of the most effective investments in reducing prison populations and recidivism.

Educational prison programs also reduce prison misconduct.<sup>254</sup> According to Paul Wright, director of the prisoner-rights advocacy group Human Rights Defense Center, there is a simple and accurate explanation for the increase in violence in South Carolina prisons in recent years: the lack of funding for “incentive programs” — vocational, academic, and work programs for incarcerated people.<sup>255</sup> “When you take away all hope and you take away any reason for [incarcerated people] to behave themselves,” Wright explains, “then that’s when you start having higher levels of violence, assaults, and attacks.”<sup>256</sup> That’s exactly what is occurring at SCDC. The lack of existing prison programs combined with the overuse of lockdowns to manage the prison population in lieu of hiring sufficient employees consistently deprives incarcerated individuals the opportunity to learn and grow.

By reducing recidivism, prison education has the far-reaching potential to reduce the entire scale of the prison population, and, thus, prison costs.<sup>257</sup> South Carolina scored near the bottom of all state rankings in the *U.S. News and World Report’s* Pre-Kindergarden-to-12th-grade educational rankings for 2018.<sup>258</sup> Research on the state prison population shows that incarcerated people, on average, have a far lower educational level than the rest of South Carolina’s population, with more than half lacking a high school diploma or GED.<sup>259</sup>

South Carolina must be given a failing grade on addressing prison educational gaps. After a high point in 2011 when

SCDC awarded 1,209 GEDs, that rate has fallen precipitously, to a mere 42 in 2019.<sup>260</sup> Former Palmetto Unified School District Superintendent Randy Reagan admitted difficulty in hiring a sufficient number of qualified teachers inside state prisons. “We lost 130 out of 170 full time teachers during a RIF [reduction in force] in 2003, and haven’t recovered since then,” he said.<sup>261</sup>

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***“We lost 130 out of 170 full time teachers during a RIF (reduction in force) in 2003, and haven’t recovered since then,” said former PUSD Superintendent Reagan.***

— Randy Reagan, Former Palmetto Unified School District Superintendent

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A snapshot of SCDC’s performance at one of its institutions, Lieber, brings home just how few opportunities people in prison have to gain a GED. Of the approximately 1,200 incarcerated people at Lieber Correctional Institute on a given day, more than 600 lack a high school diploma or GED.<sup>262</sup> The two full-time teachers based there have the capacity to teach only 60 students a day (30 in the morning, 30 in the afternoon for three-hour periods).<sup>263</sup> That translates into a 10 percent educational-service rate, which produced a total of three GEDs at Lieber from 2015 through 2017.<sup>264</sup>

As limited as they are, SCDC GED programs cannot accommodate the large number of incarcerated people testing at elementary-school levels of literacy and math. In fact, these educational gaps are not addressed at all by SCDC. To the extent incarcerated people with such limited educational achievement receive any academic instruction, it is through remedial programs sponsored by incarcerated volunteers or volunteers from outside the prisons. Due to the department’s limited success in recruiting and supporting

volunteer programs, remedial educational programs have only been successfully operated at one prison: Allendale Correctional Institution. At Allendale, men with high-school degrees have been taught by retired professional educator volunteer Tom Conner to provide remedial classes to lower-performing incarcerated people. Due to this innovative program training a cadre of incarcerated people to become instructors for their peers, the GED rate at ACI is one of the highest in the state. The success of Allendale Correctional Institution could—and should—be replicated by prisons throughout the state.

Studies conducted over the past two decades consistently indicate that higher education in prison programs also reduces recidivism and translates into reductions in crime, savings to taxpayers, and long-term contributions to the safety and well-being of the communities to which formerly incarcerated people return.<sup>265</sup> The higher the degree earned, the lower the recidivism rate.<sup>266</sup>

In May, 2020, Claflin University was chosen as one of just 67 colleges and universities in the country as a recipient of a Second Chance Pell Grant Pilot Program funded by the U.S. Department of Education.<sup>267</sup> Second Chance Pell grants provide funding to indigent individuals in federal and state prisons to enroll in educational programs at local colleges and universities.<sup>268</sup> According to Claflin President Dr. Dwaun J. Warmack, education and rehabilitation demonstrates the efficacy of Pell grants.<sup>269</sup> “A quality education is the gateway to empowerment,” he says, “and plays a critical role in the successful re-entry of formerly incarcerated people into their respective communities.”<sup>270</sup>

### **Vocational programs reduce recidivism and build skills**

SCDC is insufficiently staffed to build up the vocational skill sets of prisoners during incarceration so they will be better



prepared to obtain gainful employment upon release. A comprehensive meta-analysis from the New York University School of Law concluded that vocational programs can drop recidivism by 20 percent, raise earnings post-release, and diminish future criminality.<sup>271</sup> Another study by the Florida Department of Corrections indicated that people who earned a vocational certificate were 14.6 percent less likely to recidivate.<sup>272</sup>

Unfortunately, vocational programs within SCDC are spotty. Some institutions offer carpentry or welding, while others have no such programs. Those individuals who are lucky enough to earn a slot in a vocational program are very limited in number, even as the interest in and demand for these programs remains very high. After a high point in 2013, when SCDC issued 3,361 vocational certifications, that rate dropped by half, to 1,521 in 2018.<sup>273</sup>

### **The importance of preparing everyone for re-entry**

South Carolina lags behind many other states in re-entry efforts. Former SCDC Deputy Director of Programs and Re-entry Nena Staley established a successful 30-day re-entry program immediately before release at the Columbia-based Manning Correctional Institution, focusing on teaching people approaching release about soft skills, such as resume writing, proper work attire, and interviewing skills.<sup>274</sup> This program at Manning, a low-security prison,

is a good start, but only assists a small fraction of people who are released every year, as it is limited to those convicted of nonviolent offenses. More recently, SCDC has implemented similar re-entry programs in Level 2 and 3 institutions but these programs are not available to incarcerated individuals until just months prior to their release.

The larger critique is that these programs offer too little, too late. South Carolina simply lacks the staff and capacity to implement large-scale re-entry assistance throughout the correctional system. This is the tragic reality facing South Carolina incarcerated people today, as returning citizens face steep obstacles upon release from prison without sufficient preparation for success.

### **The prison economy**

Prison economies defy virtually every principle that applies to other economic systems.<sup>275</sup> The cost of goods inside prisons bears no relation to the wages paid or purchasing power of the prison population.<sup>276</sup> Items that are typically inexpensive and easy to purchase outside prison are often the most difficult to obtain and carry the most value to those incarcerated.<sup>277</sup> That fact is particularly true for people serving long sentences, where obtaining simple items such as an extra blanket or a favorite snack can make a huge difference. Yet in an environment where most incarcerated people are indigent or at most have meager earnings, the cost of everyday items is exorbitant. State prisons often contract with private companies to provide phone services and commissary items at astronomical prices that make airport concessions seem like a bargain.

Pay for prison employment utilizes a drastically different set of rules as well. While there is relatively scant research into this multi-billion-dollar field, some aspects are well established. The 13<sup>th</sup> Amendment



to the U.S. Constitution prohibits all forms of slavery and involuntary servitude, “except for punishment for a crime,” which has been interpreted to mean that there is no legal requirement to pay people in prison for their work.<sup>278</sup> That explains why many states do not pay the majority of prisoners for working in the prison kitchen, performing maintenance on prison vehicles, or cleaning the prison dorms.<sup>279</sup> Today, prison administrators incentivize incarcerated people to do much of the work required to keep prisons running by rewarding them with “earned time” or “work credits,” which reduce the remaining required time to be served on a sentence.<sup>280</sup> Those refusing to work have these credits withheld.

Most prisons, including those in South Carolina, offer a small number of jobs that do provide monetary compensation, albeit at rates that are paltry compared to comparable work outside of prison.<sup>281</sup> As of 2015 only a small proportion of people in prison, 1,305 out of 21,251, or approximately 6 percent, were paid for their work through one of the state’s three prison employment programs.<sup>282</sup> The pay ranges on the low end between \$0.35 and \$1.80 per hour, to payment of prevailing industry wages for the very coveted slots in Prison Industry Employment.<sup>283</sup> Support for raising prisoners’ wages has been voiced by the American Corrections Association and many others as a means of improving prison security, raising morale, and establishing self-sufficiency.<sup>284</sup>

Remarkably, as the cost-of-living marches upward over time, most state prison wages have further decreased since 2000.<sup>285</sup> The meager funds that are earned from prison employment are further eroded through deductions to cover court costs, restitution, and even prison room and board.<sup>286</sup> Therefore, families of incarcerated people must often bear the tremendous burden of paying for phone calls and commissary items.

The disparity between the haves and

have nots inside SCDC, combined with the dire staffing shortage, creates a perilous environment that is ripe for abuse for all incarcerated people. SCDC does not provide adequate quantities of basic necessities, such as toothpaste and soap, to indigent people. Individuals with no access to funds are often forced to perform undesirable or dangerous tasks in order to obtain the money they require for the most basic needs. Alternatively, others receiving funds from family or friends become vulnerable targets for physical attack. The lack of staffing exacerbates these issues, as incarcerated people are forced to fend for themselves without the protection that adequate prison staff is obligated, but failing, to provide.

While it may be legal to mandate unpaid labor in prisons, research indicates it is not wise. Several prominent studies support the notion that paid prison-based employment programs save a substantial amount of money in incarceration costs, and help reduce costs to the state.<sup>287</sup> One study demonstrated that by paying incarcerated people a reasonable wage for work while in prison, allowing them to save, and letting have access to those funds upon release reduced the recidivism rate to zero on the first day of reentry into society, with no increase in crime later.<sup>288</sup> While it may seem like not compensating or underpaying incarcerated people for their work saves money, research indicates the American economy suffers from preventing people in prison from being compensated.<sup>289</sup>

## Access to CARES Act stimulus funds

The COVID-19 pandemic resulted in a steep death toll, as well as exacting economic devastation around the world. People in congregate settings such as nursing homes and prisons were particularly vulnerable to the virus, and the havoc it wreaked. U.S. policymakers passed several stimulus packages to provide assistance for unemployed and

underemployed people as well as businesses hit hardest by the deadly virus. After much initial confusion, the courts made clear that incarcerated people throughout the nation were eligible for these CARES Act funds. Nonetheless, the process of obtaining stimulus funds has been anything but smooth for the millions of incarcerated people across the U.S.

Each round of stimulus funding was welcomed by Americans struggling to make ends meet, pay the mortgage, or put food on the table. In particular, incarcerated people and their loved ones depended on access to these funds. With the virus spreading like wildfire through prisons, there was dwindling staff to distribute meals, transport people to necessary medical appointments, and provide life-saving cleaning supplies. As a result, people in prison relied on their ability to purchase food items, medicines, and other items from the commissary. Because most incarcerated people lack access to paid employment while in prison, the cost of providing necessary items fell on their families, who themselves were often financially strapped.

In the fall of 2020, under relentless pressure from ACLU of South Carolina and other prison advocates, SCDC temporarily waived its policy banning IRS forms inside the prison to facilitate the CARES Act application process for the prison population. But in the spring of 2021, for reasons that remain unclear, SCDC refused to waive its policy again, causing consternation and confusion system-wide. With the deadline for application rapidly approaching, many incarcerated people were unable to apply for the funds, again limiting their access to commissary items and making them even more dependent on their already financially strained families.

## **The value of volunteer programming**

SCDC is statutorily obligated to provide educational and other types of programming to enable incarcerated people

to prepare for release.<sup>290</sup> Despite this obligation, many programs and services have been dismantled over the past 20 years, and the few that remain are often severely under-resourced. Today, SCDC offers a paltry number of programs, and has failed in fulfilling this important duty.

In order to bridge the gap, some wardens have attempted to fill the void with the help of volunteers across the state. Volunteers can temporarily assist in providing crucial programs, but it is imperative to remember that this is a band-aid solution that can never replace the state's legal obligation to provide programming. South Carolina is home to a robust community of retired individuals, many of whom moved south to enjoy the pleasant weather and cheaper cost of living. Many retirees have had lengthy careers and a deep well of experience and skills, and have responded to the dire needs within the state's prisons. These volunteer efforts are greatly beneficial, but should be expanded beyond the largely spiritual activities that have been provided to date.

South Carolina's prison population would also benefit from programs taught by formerly incarcerated people. For decades, research has shown that the "peer-to-peer" model is an effective method of instruction, primarily because formerly incarcerated teachers have shared experiences with their students, earning them more credibility and trust than prison staff who may represent "the system."<sup>291</sup> Regrettably, SCDC denies formerly incarcerated people access to prisons for a period of five years following their release from prison, effectively shutting the door on the many benefits these potential volunteers could offer to the prison population.

Given SCDC's failure to provide sufficient programming within the prison system, the department should be taking greater advantage of the generosity of volunteers to provide programming wherever possible. SCDC has failed to tap into this pool of talented people to

encourage them to share their knowledge and expertise inside our state prisons as volunteers, with the single exception of the volunteers at Allendale Correctional Institution. Under the bold and creative leadership of former Allendale warden John Pate and continued by Warden McKendley Newton, such volunteer-based programs have been developed and are operating as a “character-yard.” The Allendale “character” program has been nationally recognized for its activities initiated by accomplished volunteers and subsequently led by incarcerated people, including animal husbandry, remedial education, addiction-recovery programs, and much more. The difference between Allendale's Level 2 yard and other SCDC facilities is palpable.

### **The benefits of visitation**

Research has also proven that visitation

policies, much like access to prison programs, improve prison safety and increase the likelihood of successful re-entry.

A study from the Minnesota Department of Corrections found that a single visit correlated with a 25 percent drop in technical violations and a 13 percent drop in new crimes once an individual got out of prison.<sup>292</sup> Many other studies have confirmed that visitation has powerful positive effects on prison misconduct as well as recidivism.

Despite the breadth of research showing that maintaining family ties is among the best ways to reduce recidivism, the reality of having a loved one behind bars is that visits are unnecessarily grueling and frustrating.<sup>293</sup> Most people in state prisons, (63 percent), live more than 100 miles from their families.<sup>294</sup>

Many of South Carolina's prisons are



located in rural areas of the state, while families of the incarcerated predominantly live in the cities, making visitation difficult, particularly with South Carolina's lack of public transportation infrastructure. SCDC's visitation policies can be onerous, such as requiring children under the age of 10 to provide a copy of their long-form birth certificate, arbitrarily prohibiting visits, and requiring all visitors to come at the same time in one day.<sup>295</sup>

In addition, prison phone charges can be costly, causing great hardship for indigent incarcerated people and their families. Whenever an institution is placed on lockdown, visitation is curtailed indefinitely. All of these factors discourage many from visiting their incarcerated loved ones, even as research consistently points to the importance of maintaining family ties in achieving successful rehabilitation.

### **Managing COVID-19 in South Carolina prisons**

By any standards, even on the best of days, SCDC has had an abysmal record of providing a safe and healthy environment for incarcerated people. The emergence of COVID-19 in the spring of 2020 added a wide range of new and difficult challenges for prison administrators to manage.

South Carolina's over-incarceration problem and unwillingness to reduce prison and jail populations collided with a global pandemic early in 2020. At the onset of the novel coronavirus outbreak, public-health experts emphasized the interconnectedness between the fate of incarcerated people and the communities surrounding correctional facilities.<sup>296</sup> Correctional officers and other prison staff entered the prisons every day, mixed with incarcerated people and returned home. Health authorities cautioned that congregate settings such as nursing homes and prisons posed elevated risks, as the virus would spread quickly once it entered such facilities. Nonetheless, national and state leaders, along with

SCDC administrators, failed to adequately prepare for and protect both prison staff and the incarcerated population.

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***"If you want to see an end to the pandemic, you've got to vaccinate the people in the places where there are the largest clusters and the most cases,"***

**—Jaimie Meyer, Associate Professor of Medicine and Public Health, Yale University**

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SCDC and the South Carolina Parole Board refused to take any meaningful action to reduce the prison population, and SCDC management resisted public urging to allow for any meaningful social distancing, to implement a rational testing protocol, to isolate and provide appropriate care for those who may already be ill, or to continue necessary treatment for those with other serious medical issues.

COVID-19, which is a highly contagious and deadly respiratory virus, created an unprecedented public-health crisis. Because it is easily transmissible, including by asymptomatic carriers, the only ways to slow its spread are through physical distancing, frequent hand washing with soap, disinfecting living spaces, and wearing masks.

COVID-19 poses particularly stark and stunning risks to people confined in prisons.<sup>297</sup> The close quarters and often unhygienic conditions in correctional facilities are in effect petri dishes for disease transmission. Incarcerated individuals must often live together in dormitory-style housing or in double- and triple-bunked cells.<sup>298</sup> Living in such close proximity to one another, they must share toilets, sinks, showers, and even soap (when they have access to it).<sup>299</sup> Because physical distancing and vigilant hygiene are impossible under current conditions,

highly transmissible diseases like COVID-19 can, and have, spread at a dramatically accelerated rate in jails and prisons.<sup>300</sup>

It is not only the facilities' physical conditions that make the problem particularly acute. Many people in prisons are more vulnerable and susceptible to the risks of coronavirus because of the high incidence in that population of chronic underlying health conditions, such as diabetes, heart disease, chronic lung and liver diseases, asthma, and compromised immune systems from HIV or chemotherapy cancer treatment.<sup>301</sup>

In addition, even under normal circumstances, as we have noted, incarcerated individuals have limited access to medical care.<sup>302</sup> As staff becomes sick, including medical personnel, even fewer people are available to care for those who remain confined. All of these factors—the living conditions, a particularly vulnerable population, and limited medical care—make the outbreak of a highly infectious, deadly virus in a closed detention setting a disaster of epic proportions.

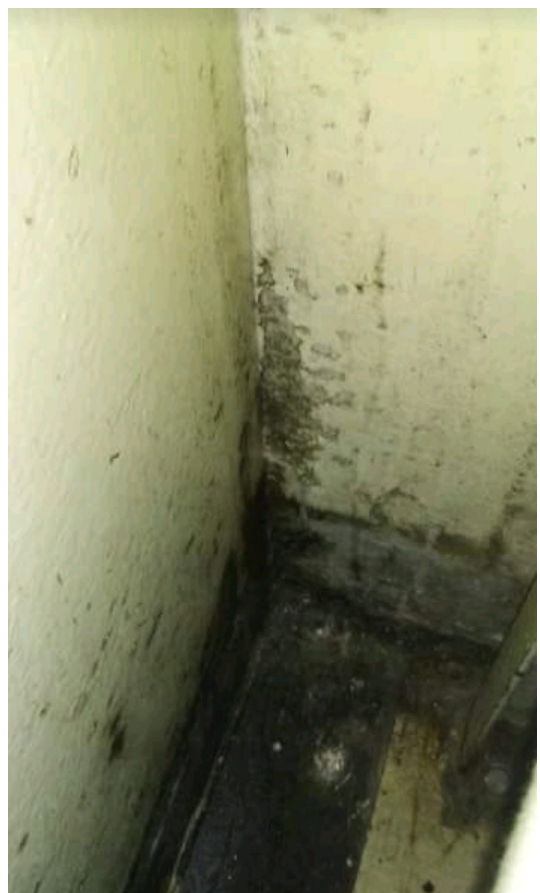
As the pandemic entered its second year in 2021 conditions have only worsened. The United States is the world's most prolific jailer, and her 2.3 million incarcerated people are five times more likely to test positive for coronavirus as Americans generally, and nearly three times as likely to die.<sup>303</sup> Some states, including California, Missouri, and Pennsylvania have been so overwhelmed by the coronavirus that they have been forced to close some prisons, transporting incarcerated people to other facilities.<sup>304</sup> This has only served to exacerbate the problem, as health-care experts warn that transferring people is very dangerous.<sup>305</sup> "The burden of Covid-19 has already been too high in prisons and jails and the continued transfers of people between facilities is spreading and causing further outbreaks," says Jacob Kang-Brown, senior research associate at Vera Institute for Justice.<sup>306</sup>

## The arcane prison-grievance process

People in free society may have no reason to know this, but there is no Consumer Protection Agency or similar institution inside prisons to protect the rights of the incarcerated. Instead, people in state and federal prisons rely on some type of grievance process to document all types of concerns, ranging from complaints about medical issues to criticisms of visitation policies and beyond.

The grievance system was created in the aftermath of the infamous Attica prison uprising: a standoff in 1971 involving nearly 1,300 incarcerated men who took over Attica prison in New York to protest the abusive conditions and the deplorable living environment.<sup>307</sup> The uprising ended with the deaths of 43 people, most of them incarcerated people, after state officials decided to end negotiations and authorize the use of live ammunition.<sup>308</sup> A nationwide "Prisoners' Rights Movement" emerged from the uprising; and experts created grievance systems as a method to "release steam" before tensions grew to unsustainable levels again.<sup>309</sup>

As America enacted sentencing policies that filled its prisons and resulted in an explosion of the prison population, state and federal courts saw a dramatic uptick in the number of lawsuits filed by incarcerated people.<sup>310</sup> State attorneys general reacted by waging a concerted campaign to publicize examples of cases they deemed "frivolous," in an effort to thwart prisoners from filing complaints about their care. The publicity campaign worked; as a result, President Bill Clinton signed the Prison Litigation Reform Act (PLRA) into law in 1996, which made it more difficult for incarcerated people to challenge their deplorable conditions of confinement or other grievances.<sup>311</sup> In reality, the number of lawsuits filed per capita actually declined over the twenty years preceding PLRA's passage.<sup>312</sup> In practical terms, PLRA makes it much more difficult for incarcerated people to file



*Medical, food, and living conditions within SCDC facilities*

lawsuits in federal court. The most impactful aspects of PLRA are:

- **Exhaustion of administrative remedies:** Any incarcerated person wishing to file a claim in federal court first must exhaust all administrative remedies that are available.<sup>313</sup> This means he or she must attempt to resolve any complaint through the internal grievance process, following every step and appeal process to the end. Failure to fully complete this process results in the dismissal of a complaint filed in federal court.<sup>314</sup>
- **Payment of filing fees:** Any incarcerated person wishing to file a claim in federal court must pay all filing fees in full.<sup>315</sup> If a person is indigent, the fees will not be waived but can be paid in installments.<sup>316</sup>

The PLRA dramatically reduced the number of federal lawsuits and in the process greatly curtailed the rights of the incarcerated.<sup>317</sup> With PLRA, many prison administrators made internal grievance processes more onerous and added policies to throw out complaints solely for technical reasons, such as using the incorrect color of ink to write a complaint.<sup>318</sup> “There was a huge incentive to make the grievance process as complicated and as impossible to complete properly as they could,” explains Alan Mills, a lawyer and executive director of the Uptown People’s Law Center, who has spent decades representing prisoners in Illinois.<sup>319</sup>

Many experts argue that grievance processes today are designed to protect department of corrections employees from lawsuits, rather than protecting incarcerated people from constitutional violations and other harms. Today, each prison system designs its own set of rules regarding the manner in which complaints can be submitted, the timeframe for prison administrators to respond, and the terms of appealing these responses. Many grievance

policies are complicated, and allow a lengthy period of time for prison staff to process grievances. In that vein, South Carolina’s grievance policy is complex, onerous, and very time-consuming.<sup>320</sup>

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***“The walls and razor wire surrounding prisons at times seem to serve dual purposes: to keep the inmates inside, and to keep everyone else out,”***

—Jennifer Gonnerman, *The New Yorker* magazine

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The ACLU of South Carolina has received countless letters and complaints about SCDC’s grievance process, primarily focusing on allegations that prison employees often purposefully “lose” medical complaints, or deny the majority of grievances. As a result, the consensus feeling expressed by South Carolina incarcerated people is that they do not have faith in the grievance process. A study of 12,780 Illinois prisoners by the John Howard Association in 2019 showed a similar level of dissatisfaction.<sup>321</sup> The Illinois study found that only 5 percent of prisoners considered the prison grievance process effective, and just 13 percent felt comfortable filing a grievance.<sup>322</sup>

Relying on complicated grievance procedures to deter incarcerated people from expressing their concerns about prison life causes the state to lose out on the opportunity to resolve real problems before individuals take their complaints to the court system. From Fiscal Year 2015-2019, SCDC cost the state roughly \$10 million in payments to victims of prison malpractice.<sup>323</sup> And no doubt without the limitations imposed by PLRA that number would be considerably larger.

**SCDC’s lack of transparency combined with retribution faced by journalists and advocates covering prison issues**

As COVID-19 predictably infiltrated SCDC institutions in 2020, incarcerated

people faced a stark choice: speak to reporters about the deadly conditions and face retaliation from prison staff, or keep quiet and face death on a massive scale. Sadly, prisoners' courage did not stop the carnage, but it likely resulted in forcing prison administrators to improve conditions, at least on the margins. The crux of this dilemma has its roots in a trio of U.S. Supreme Court decisions made in the 1970s.<sup>324</sup> The key takeaway from these cases: prison security considerations trump the rights of members of the press to interview specific prisoners.<sup>325</sup>

It is rare for wardens to allow journalists to observe prison conditions firsthand; many preclude in-person interviews as well.<sup>326</sup> In addition, incarcerated men and women risk retaliation by prison staff by advocating for their rights through interviews with the press.<sup>327</sup> These factors combine to hide the reality of prison life in a black box, sheltering the American public from having to fix the injustices that have smoldered as a result of the policies driving mass incarceration. "The walls and razor wire surrounding prisons at times seem to serve dual purposes: to keep the inmates inside, and to keep everyone else out," wrote Jennifer Gonnerman in *The New Yorker*.<sup>328</sup>

Formerly incarcerated advocate and journalist Paul Wright, founder of *Prison Legal News*, made a compelling case for opening the prison doors to the media.<sup>329</sup> The average prisoner, he explains, is someone who is mentally ill, functionally illiterate, and may suffer from a substance-abuse problem.<sup>330</sup> In other words, he or she represents the most vulnerable among us. At the same time, Americans have spent more than \$1 trillion building and filling prisons, largely without the benefit of media coverage to analyze the wisdom of these expenditures.<sup>331</sup> The lack of oversight bodies shroud prison environments in even greater secrecy. Taken together, prisons are among the most isolated, misunderstood places in America, even as they absorb an oversized share of the nation's budget.

"American prisons are used to operating in the shadows," said ACLU National Prison Project Director David Fathi.<sup>332</sup>

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***"American prisons are used to operating in the shadows," according to ACLU National Prison Project Director David Fathi.***

—David Fathi, ACLU National Prison Project Director

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Prison advocate and journalist for the ShadowProof website Jared Ware recounted the chilling experience of trying to document SCDC prisoner accusations of abuse at McCormick Correctional Institution.<sup>333</sup> Ware interviewed people at the prison alleging they were being denied access to water.<sup>334</sup> He aired the allegations on his podcast.<sup>335</sup> Shortly thereafter, he learned that guards had listened to the podcast and demanded the names of the people who spoke to Ware.<sup>336</sup> His prison sources grew terrified, and asked that he take down the podcast.<sup>337</sup> He complied, understanding the risks they faced by sharing the reality of everyday life in a South Carolina high-security prison.<sup>338</sup> Multiply that experience by the hundreds, perhaps thousands, and that is how the curtains get pulled shut on the stories of millions of Americans. Even when the issue is as simple as the need for safe drinking water.

Congress and state legislatures also need to take a fresh look at the logic of tilting the scales so heavily in favor of honoring prison-security concerns, at the expense of enlightening society about the prison experience. Experts recommend the creation of independent prison ombudsmen to oversee all aspects of prison operations, from the grievance process to the provision of medical and mental-health services and nutritional meals. New Jersey and Washington have independent corrections ombudsmen, and other states, including Illinois, have filed bills to create such a position.<sup>339</sup>



## HOW DO WE FIX THE COSTLY MISTAKES OF THE PAST AND PROTECT PUBLIC SAFETY IN SOUTH CAROLINA?

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America has adopted the tough-on-crime approach for almost half a century. This has given researchers plenty of time to evaluate the effectiveness of harsh sentencing techniques, and the verdict is virtually unanimous: these tactics do not work. One of the most glaring consequences of these policies has been the dramatic rise in prison populations, and, alongside that, the increased costs associated with providing services. The outsized costs of imprisoning a greater share of society eventually necessitated painful cuts in corrections budgets.

When the floodgates were opened in South Carolina in the 1980s and 1990s former SCDC Director Michael Moore responded to the dramatic rise

in the number of people sent to prison by dismantling the system of prison programming. This largely transformed prisons into human warehouses devoid of prospects for rehabilitation.

We cannot change the past, but research underlines the folly of our previous sentencing policies. Increasing public safety will require turning virtually every former policy belief on its head. States, including South Carolina, must streamline laws to dramatically reduce the number of people sent to prison. The existing levels of corrections staff will have a far greater capacity to manage a substantially lower prison population than they do with the current large numbers. Budgetary savings will enable prison staff to facilitate prison

programming, including educational, rehabilitation, and vocational courses. This smaller prison population will benefit from access to life-altering programs, allowing individuals to get at the root of the issues that may have contributed to the causes of their criminal behavior in the past and help prevent them from repeating those behaviors.

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***“After decades in which fear of crime and ‘tough on crime’ were the ultimate wedge issue, now there’s a competition to see who can have the most transformative reform,” said Michael Waldman, president of the Brennan Center on Justice. “In three decades, to go from Willie Horton to ‘how do we end mass incarceration’ is a long leap.”***

—Michael Waldman, president of the Brennan Center on Justice

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The consensus that punitive policies are ineffective is not just the conclusion of organizations perceived as left-leaning. Groups as diverse as Americans for Prosperity and Right on Crime agree with the Center for American Progress and NAACP. Commenting on a 2019 Brennan Center for Justice report on America’s criminal justice system, New Jersey Senator Cory Booker, a Democrat, sounded virtually indistinguishable from Mark Holden, former senior vice president of the conservative Koch Industries. Our current system is “an affront to our most fundamental values of freedom, equality and liberty,” said Senator Booker, before suggesting that the U.S. sentence fewer people to prison, seal nonviolent criminal records, and restore the voting rights of returning citizens.<sup>340</sup> Holden echoed Booker’s beliefs about the injustice of harsh sentencing laws. “To endlessly

punish those who have paid their debt to society is simply immoral,” he said, before reiterating support for the same policy fixes as Booker.<sup>341</sup>

In today’s incredibly divisive political environment, it is rare for our political leaders to find common ground on important societal issues. And yet, on sentencing policy, Republicans and Democrats have supported the same misguided and harmful policies in the past. One of the factors that prompted both parties to agree on enacting harsh sentencing policies some 50 years ago was the heated rhetoric surrounding the Willie Horton case. During the presidential campaign of 1988, former President George H. W. Bush repeatedly used the Horton case as a cudgel against his opponent, former Massachusetts governor Michael Dukakis.<sup>342</sup> Horton was a Black man convicted of raping a white woman while on temporary leave from prison as a result of Massachusetts law. By relentlessly repeating the facts of the Horton case, the Bush campaign successfully painted Dukakis as soft on crime by employing dog-whistle tactics to elicit racist tropes in the minds of many voters.<sup>343</sup>

Many believe the Horton advertisement played a crucial role in Bush’s victory, and instilled fear in the minds of the Democratic Party for decades to come that similar tactics would likewise paint them as soft on crime. Historians saw a clear correlation between the Willie Horton attacks and Democrats’ decision to pass the 1994 crime bill, which implemented many of the harsh sentencing policies that are much maligned today, particularly for their disproportionate impact on African Americans.<sup>344</sup>

There is a silver lining: Just as both parties supported wrongheaded policies in the past, leaders in the Democratic and Republican parties appear to have learned from those mistakes today. “After decades in which fear of crime and ‘tough on crime’ were the ultimate wedge issue, now there’s a competition to see who can have the

most transformative reform,” said Michael Waldman, president of the Brennan Center on Justice. “In three decades, to go from Willie Horton to ‘how do we end mass incarceration’ is a long leap.”<sup>345</sup>

### **With political consensus, where do we go from here?**

This bipartisan consensus has been forged in the belief that the present policies are both morally and fiscally unsustainable. The majority in both parties believe we need to enact measures to release people from prison who no longer pose threats to public safety, regardless of past convictions.

Criminal justice experts are also re-imagining how we define public safety. Crime, after all, is an artificial construct. Police have been given immense authority to determine which communities are targeted, which individuals will be arrested, and which criminal offenses will be charged. We must reconfigure our societal priorities, investing in affordable housing, social services, quality education, and mental-health assistance in impoverished communities rather than funding law-enforcement activities there.<sup>346</sup>

The Charleston People’s Budget Coalition is comprised of diverse community groups with the goal of reimagining public safety. This coalition recognizes the need to reinvest in people and communities rather than police and incarceration. Coalition members stress that providing access to health care and a living wage are crucial aspects in ensuring public safety.<sup>347</sup>

Yet even though there may be general agreement on policy goals, many states have yet to follow through on plans to achieve these objectives. South Carolina was one of 34 states that have reduced their prison population and their crime rates concurrently, showing that decreasing sentence lengths does not necessarily lead to an increase in crime.<sup>348</sup> So why has there been reluctance on the part of policymakers to take the next steps?

### **Infrastructure installed by tough-on-crime laws**

The structure that facilitated the mass incarceration of Americans remains in place, largely untouched by recent reform legislation. Legislation from the 1970s onward established the machinery that continues to perpetuate the arrest and incarceration of millions of Americans, even as crime rates remain at historic lows.<sup>349</sup> “The same funding streams that overwhelmingly support enforcement activities over proven preventative and restorative solutions continue to this day—albeit with tweaks around the edges.”<sup>350</sup> It is only when policy makers cease their support for the policies that underpin America’s over-incarceration problems that we will be able to begin to unwind the most damaging effects.

As mentioned, the 1994 crime bill provided an influx of \$12 billion in federal funds to the states, subsidizing state correctional institutions.<sup>351</sup> In the decade after the crime bill’s enactment, the number of new prisons constructed nationwide rose by 20 percent, while the prison population grew by 40 percent.<sup>352</sup> Even as crime rates remain low, the incentive for states to accept federal-crime-bill funding persists as a method to create jobs and spur the local economy.<sup>353</sup> According to researchers from American Progress, “this vicious cycle must stop—starting with policymakers ending funding, resources, and incentives to build new jails and prisons.”<sup>354</sup>

The interconnectedness of private industries operating inside state prisons complicates that aim. The privatization and monetization of virtually every aspect of the criminal justice system has increasingly allowed private corporations to dictate the pace and shape of reforms. Every year, private vendors make \$1.6 billion in profits from prison commissary sales of items such as soap and toothpaste.<sup>355</sup> Telephone companies collect billions in profits from incarcerated individuals and

## South Carolina Department of Corrections Institutions



their loved ones.<sup>356</sup> Companies such as JPay and GTL provided tablets to entire prison populations for free, but once inside, charge exorbitant fees for e-books, songs and educational programs.<sup>357</sup> “As long as the criminal justice system is motivated by profit, it will continue to expand its reach and inflict undue harm on individuals and communities.”<sup>358</sup> Our elected officials must cease using for-profit vendors throughout

the criminal justice system.

The surge of corrections spending over recent decades has often been used to spur job growth in rural areas of South Carolina that had suffered deep economic losses with the closure of textile mills and manufacturing plants. Correctional institutions dot the countryside in small towns like Bennettsville, Fairfax, Bishopville, and beyond, sometimes



To achieve a meaningful reduction in prison populations, leaders must be open to policies that allow for early release, not just for individuals convicted of nonviolent offenses, but also for people convicted of violent crimes after serving a certain percentage of their sentence. In addition, there

providing more jobs in the community than any other employer. This creates a perverse and dangerous incentive to keep prisons filled in order to avoid the loss of employment in economically challenged areas of the state.

President Joe Biden has promised to implement policies that will roll back the damaging sentencing laws that he supported and voted for in the past.<sup>359</sup> He has pledged to allocate \$20 billion in federal funds to states that adopt evidence-based programs aimed at diverting people from incarceration and preventing crime.<sup>360</sup> States will be required to eliminate mandatory-minimum sentencing and adopt programs awarding earned-time credits for those currently incarcerated in order to get access to federal funds.<sup>361</sup>

### **Building a smarter justice system**

South Carolina policy makers must begin quickly reversing deeply established patterns of incarceration. Far too many people have been incarcerated for too long. To address those wrongs, our state leaders must enact legislation that reduces the footprint of our counterproductive criminal legal system, fully funds prison programming, incentivizes positive behavior, and greatly enhances opportunities for early release from prison.

should be a rebuttable presumption of release for individuals age 50 and above, combined with strong systems of community support and assistance upon re-entry into society.

### **Two-tiered justice: People convicted of violent crimes are excluded from reforms**

At the outset, it is important to clarify that not all individuals classified as “violent offenders” have committed offenses that would be viewed as violent by the majority of the public. For example, some drug manufacturing or drug sales are classified as “violent” in the South Carolina criminal code, even though the underlying elements of the crime do not include the commission of a violent act against any individual.<sup>362</sup> At the same time, crimes like wage theft, which can lead to serious physical harms as families cannot afford basic needs, are classified as nonviolent. Under our system, crime and harm are divorced from one another. Because of this, labels like violent and nonviolent are often rendered meaningless.

Many states, including South Carolina, have chosen to change sentencing for nonviolent cases first, leaving the more difficult reforms for another day. This task of providing opportunities for earlier release

to people convicted of violent offenses may appear daunting, but the overwhelming body of research confirms it is eminently possible, and the right policy to pursue.

### **The Unger case study: Demonstrating that we can safely release people convicted of violent crimes**

Anecdotal evidence from a landmark court case, *Unger v. Maryland*, has provided powerful lessons for policymakers regarding the potential to safely release individuals who have committed a serious violent offense.<sup>363</sup> This 2012 case resulted in the release of 235 people convicted of violent offenses prior to 1981 from Maryland prisons.<sup>364</sup> Each individual had served more than 30 years for homicide or rape prior to being released back into society, bolstered by privately financed specialized re-entry programming beginning inside prison and continuing after release.<sup>365</sup> Six years after their release, the Unger cohort has a less than 1 percent recidivism rate, as compared to a more than 40 percent recidivism rate for all formerly incarcerated individuals in Maryland.<sup>366</sup> Research shows this lower recidivism rate is likely due to the advanced age of people in the Unger category, and the fact that recidivism rates decrease with age.

Some of the most promising sentencing reforms have been enacted in the South, in states that traditionally have been viewed as the most reluctant to embrace change in this arena. Former Republican Texas Governor Rick Perry, once a harsh skeptic of criminal justice-reform efforts, eventually recognized the many benefits that came with measures that addressed the underlying causes of crime rather than simply locking up individuals.<sup>367</sup> Rather than supporting the planned addition of prison beds in Texas in 2007, Perry instead advocated that state funds be put towards expanded treatment programs.<sup>368</sup>

In 2014 Mississippi passed HB 585, which reduced the amount of time individuals convicted of violent offenses have to serve

before becoming eligible for parole.<sup>369</sup> This is not the only way to achieve a reduction in state-prison populations, but it serves as an example that southern, conservative states can safely enact criminal justice reforms that include violent offenses.<sup>370</sup>

### **Juvenile Life Without Parole (JLWOP): Research into the juvenile mind proves youth should be treated differently**

Scientific research on the adolescent mind has had a remarkable impact on the legal field over the past two decades. Landmark studies have highlighted that until the brain is fully formed, younger people have trouble considering the long-term ramifications of decisions. Often these developmental changes are not fully complete until age 25.

Several important cases handed down by the U.S. Supreme Court starting in 2005 recognized the clear developmental differences exhibited by juveniles that warrant granting them a separate, more protected status in our legal system. Repeatedly, the Supreme Court wrote that children “generally are less mature and responsible than adults,” and that they “often lack experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them,” and “are more vulnerable or susceptible to ... outside pressures than adults.”<sup>371</sup>

The recent substantial body of research into brain development illustrates that juveniles are more impulsive and more susceptible to peer pressure than their adult counterparts.<sup>372</sup> As a result, our highest court has made mandatory Life Without Parole sentences (LWOP) for juveniles obsolete, and required a detailed retroactive review of the individual cases across the nation that had been sentenced as juveniles to life in prison.<sup>373</sup>

In 2018, the composition of the Supreme Court changed with the death of Justice Ruth Bader Ginsburg and confirmation of Justice Brett Kavanaugh.

This conservative-leaning court has demonstrated a willingness to change course on a number of issues, including its longstanding record of recognizing that children convicted of committing the most serious crimes should only be condemned to life in prison in the rarest of circumstances due to their still-developing brains.<sup>374</sup> In April 2021, Justice Kavanaugh penned the majority opinion in *Jones v. Mississippi*, arguing that judges need not make a determination of “permanent incorrigibility” before sentencing a juvenile to life in prison without the possibility of parole.<sup>375</sup> This marked the first time in almost two decades that the Supreme Court deviated from its longstanding position that young people should be provided greater leniency, regardless of the offense committed.

Today, 30 states and the District of Columbia have banned JLWOP or do not have any people serving such a sentence.<sup>376</sup> Most recently, Ohio banned JLWOP in January 2021.<sup>377</sup> In South Carolina, juveniles convicted of homicide remain eligible for LWOP sentences.<sup>378</sup>

## The damaging war on drugs

Since 1971 the war on drugs has cost Americans \$1 trillion.<sup>379</sup> As of 2015 the federal government spent \$3.3 billion annually to imprison people for drug offenses; state governments spent an additional \$7 billion.<sup>380</sup> President Nixon launched the national effort using heated rhetoric, claiming to be targeting illegal drug use. However, since that time President Nixon’s domestic policy advisor, John Ehrlichman, admitted the real purpose behind Nixon’s war on drugs was to target anti-war protesters and Black people.<sup>381</sup> “We knew we couldn’t make it illegal to be either against the war or Black,” he acknowledged, “but by getting the public to associate the hippies with marijuana and Blacks with heroin, and then criminalizing both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news. Did we know we were lying about the drugs? Of course we did.”<sup>382</sup>

The war on drugs triggered decades



of draconian sentencing regimes at the national and state levels, increasing the number of people incarcerated in American jails and prisons from 300,000 to 2.3 million.<sup>383</sup> Today, someone is arrested for a drug offense every 25 seconds.<sup>384</sup> In spite of roughly equal rates of drug use by white and Black people, Black people are almost six times more likely to be incarcerated for drug-related offenses.<sup>385</sup> Black people are also almost four times more likely to be arrested for marijuana charges than their white counterparts.<sup>386</sup> Half of those in federal prison are incarcerated for a drug offense, and two-thirds of those in prison for drug offenses are people of color.<sup>387</sup>

Disproportionate rates of arrest, conviction, and sentencing rates for drug offenses have devastated Black and Brown communities across America.<sup>388</sup> This is in spite of the fact that research has demonstrated that imprisoning people for drug offenses has had a negligible impact on reducing drug use or misuse.<sup>389</sup> To the contrary, incarceration results in higher rates of overdose and has had scant impact on public safety.<sup>390</sup> After more than 50 years fighting the war on drugs, it is clear that Americans cannot arrest our way out of this situation. We must change our focus to rehabilitation and harm-reduction strategies; investing in proven public health responses to drug use.

### **Restorative justice policies offer an alternative approach**

The majority of states today have statutes supporting a form of restorative justice (RJ) known as victim-offender dialogues (VOD). VOD programs are designed to bring perpetrators of crime face-to-face with the victims of their actions in an attempt to repair the harm that has been done through crime; and can occur at various points in the criminal legal process.<sup>391</sup> VOD programs require individuals to take responsibility for their actions, acknowledge the harmful impacts

of their actions, and, to the extent possible, take steps to make some form of reparation for their victims.<sup>392</sup> When asked about their experiences, both parties have expressed satisfaction with the process. According to victims who have participated in RJ initiatives, many have felt empowered by the experience through taking a more active role in resolution of their case.<sup>393</sup> Likewise, many people who have committed crimes have expressed remorse and a desire to change and break a cycle of incarceration and crime.<sup>394</sup>

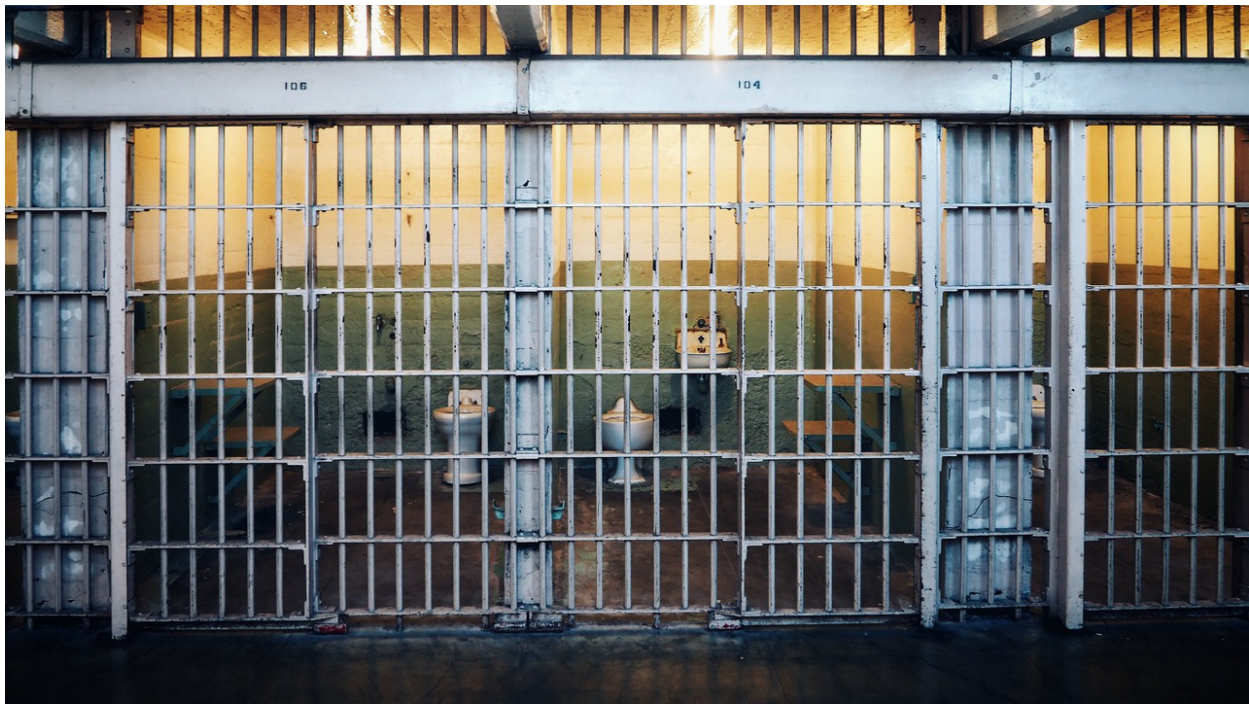
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***“We knew we couldn’t make it illegal to be either against the war or Black, but by getting the public to associate the hippies with marijuana and Blacks with heroin, and then criminalizing both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news. Did we know we were lying about the drugs? Of course we did.”***

—John Ehrlichman, former domestic policy advisor to President Richard Nixon

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Typically, incarcerated people are not allowed to contact victims from their cases. That is the case in South Carolina. VOD programs turn that philosophy on its head, allowing victims to get answers about the crime that otherwise go unanswered through the traditional legal process. The majority of feedback from both sides of the process is overwhelmingly positive, indicating that RJ policies show great promise.<sup>395</sup> In addition, VODs are embraced globally, with more than 300 programs in the United States and more than 900 in other countries. The use of VODs has been endorsed by the American Bar Association.<sup>396</sup> It is important to note that



VODs that are improperly implemented run the risk of causing additional trauma and failing both the victim and the incarcerated person. South Carolina should study VOD programs, and then embrace RJ initiatives along the entire spectrum of the justice system.

But VODs are not the only available restorative option. Aparna Polavarapu, the executive director and founder of the South Carolina Restorative Justice Initiative, as well as an associate professor at the University of South Carolina School of Law, notes that multiple forms of RJ options can be made available and should be considered.<sup>397</sup> In addition to VODs, RJ processes can be implemented through other practices both within and outside the legal system. For example, courts can divert responsible parties to programs that incorporate other types of alternative practices, such as restorative-justice circles.<sup>398</sup> RJ programs can and should also be made available for those not involved in the criminal legal system, especially individuals who experience intimate-partner violence of sexual assault.<sup>399</sup> “RJ offers a real opportunity to provide

justice for those who will choose never to participate in the criminal legal system,” said Polavarapu.<sup>400</sup>

### **South Carolina’s broken parole system**

A safe prison system can only be achieved in South Carolina by reducing the prison population.<sup>401</sup> Director Bryan Stirling has attempted for years to increase his workforce in the face of many obstacles. He has repeatedly conceded that the task of attracting enough employees to ensure a safe prison environment is not feasible, given the state’s financial constraints and the difficulty of prison work. Therefore, the answer lies in incentivizing positive behavior and program completion to prepare incarcerated people for the potential of earlier release, as research indicates this is the most effective path forward. Parole is an integral piece of this puzzle.

There is a broad consensus among criminal justice academics, experts, and practitioners that the parole system in America is broken. Organizations including the Robina Institute and Prison Policy

Initiative have conducted research and written extensively about the failure of state parole boards to release enough individuals.<sup>402</sup> South Carolina's Parole Board is no exception. This reluctance to grant parole to incarcerated individuals—even those who have demonstrated their rehabilitation through clean disciplinary records; participated in educational, vocational and rehabilitation programs; or mentored others—is well documented.

A 2010 PEW report underscored that between 1980 and 2008 the South Carolina Parole Board substantially cut the rate at which it released individuals who were eligible for parole.<sup>403</sup> In 1980 the parole board granted parole for 63 percent of all applications.<sup>404</sup> In 2000 the parole rate was reduced to 27 percent; and by 2008 just 10 percent of the parole applications were granted.<sup>405</sup> That low parole-release rate, combined with the large percentage of individuals serving “no-parole” sentences, effectively means that over time a much larger portion of the state prison population left prison without community supervision and without connection to services or support designed to assist returning citizens with re-entry into society.<sup>406</sup>

Remarkably, in the midst of a global pandemic, the South Carolina Parole Board granted parole at a lower rate in 2020 than in the previous year, even as thousands of elderly and medically vulnerable incarcerated people begged to be released to increase their likelihood of surviving the pandemic.<sup>407</sup> Research has demonstrated that older and medically vulnerable prison populations pose an exceedingly limited threat to society.

South Carolina Parole Board members are gubernatorial appointees. Interviews with former parole board members have revealed that many fear being punished with the loss of their lucrative positions for granting parole to an individual who might commit another crime. As a result, board members are reluctant to grant parole, and are incentivized to deviate from evidence-

based assessments about safety. Parole board members most often take a myopic view, focusing primarily on the seriousness of the original crime that landed individuals in prison, and discounting efforts to address issues such as addiction, mental health, or familial dysfunction.

South Carolina enacted substantive sentencing reform legislation in 2010, including measures that mandate that parole board members take into consideration aspects such as an individual's risk of recidivism and level of participation in prison programs.<sup>408</sup> In spite of these requirements being codified into law, the board continues to cite “the seriousness of the original crime” as the most common reason for denying parole. Prioritizing the original crime ahead of all other factors contradicts the overwhelming body of research in the field, and results in individuals serving sentences that are overly lengthy and costly to society. This tendency to focus on the original conviction also deprives incarcerated individuals of hope, because the original crime is an immutable fact.

According to a recent former South Carolina Parole Board member, there is an absence of a good-faith, collaborative effort to utilize information SCDC collects on incarcerated people.<sup>409</sup> Most often, SCDC and SCDPPP fail to provide institutional records to the board, meaning members have no way to discern whether or not incarcerated people used their time behind bars productively through, for example, completing a substance-abuse program.<sup>410</sup> As a result, board members glean only self-reported information by incarcerated people through parole agents, along with disciplinary records, criminal-history records, and detailed descriptions of the crime for which an individual was serving time. Individuals without an attorney are typically afforded precious little time, in some cases less than a minute or two, to make his or her case to the board. Victims, on the other hand, are given extensive time

in front of the Parole Board. Letters written on behalf of an incarcerated person and provided prior to the parole hearing are typically not read.<sup>411</sup>

These procedural deficiencies have real impacts on incarcerated people and their families. One particular category of individuals, those serving life sentences, is rarely granted parole. South Carolina's 2010 reforms primarily helped those convicted of nonviolent and low-level offenses, such as possession of marijuana. According to SCDC data, approximately one in 10 people in South Carolina prisons is serving a life sentence.<sup>412</sup>

Within the "lifer" population, 6.5 percent were young when sentenced.<sup>413</sup> According to Dr. Ashley Nellis, researcher for the Sentencing Report, the scientific and legal communities have recognized that "juveniles are less mature intellectually, and thus less culpable for their crimes than adults, but in South Carolina, 139 individuals are nonetheless serving life sentences for crimes committed as a "juvenile, with little hope or chance of release."<sup>414</sup>

South Carolinians spend approximately \$20,000 annually per incarcerated person, meaning the costs for imprisoning one individual serving a life sentence approaches \$1 million.<sup>415</sup> Research also demonstrates that even those who commit serious crimes tend to "age out" of crime, becoming far less likely to reoffend as they approach middle age.<sup>416</sup> The National Research Council, representing the top criminologists in the country, concluded: "Long sentences serve little public safety purpose and are instead maintained only to enforce the retributive goals of corrections."<sup>417</sup> The parole board's failure to provide a meaningful individualized roadmap for release of people with lengthy sentences, along with not utilizing objective standards to assess release decisions, carries a heavy price-tag, payable by all South Carolinians.

Compare this with Wyoming's parole

system, which received the highest ranking of all 50 states, according to a Prison Policy Initiative analysis.<sup>418</sup> While the parole system of Wyoming is not perfect, its parole grant rate as of 2015 was 65 percent.<sup>419</sup> The state did a number of things right in laying the groundwork for an equitable and fair parole system, including mandating in-person hearings and allowing incarcerated people access to the information the board uses to determine whether to grant or deny parole.<sup>420</sup> Unlike the South Carolina experience, the Wyoming Parole Board does not require any incarcerated person convicted of a violent or sexual offense to serve extra time in order to become eligible for parole.<sup>421</sup> The Wyoming Parole Board follows research recommendations in allowing the prison staff, those people with the most day-to-day contact with the incarcerated population, to provide feedback at parole hearings.<sup>422</sup> Perhaps the most important distinction that sets Wyoming apart from many other parole systems, including South Carolina's, is that it does not use "seriousness of the original offense" as one of possible reasons to deny parole.<sup>423</sup> These are relatively simple improvements, but they have made a huge difference.

## **Implications of the rise of the Victims' Rights Movement**

Experts have posited that one of the factors leading to the dramatic decline in parole rates in the U.S. was the emergence of the Victims' Rights Movement around 1966. One element of the Victims' Rights Movement was born out of an unlikely alliance between feminism and conservatism, sparked by a revolt against the U.S. Supreme Court's expansion of protections for criminal defendants.<sup>424</sup> Law-and-order conservatives, bolstered by California governor Ronald Reagan, criticized the Warren Court for its series of decisions protecting the rights of defendants.<sup>425</sup> The Supreme Court, the alliance argued, had forgotten to protect

the most important voice: that of the crime victim.<sup>426</sup>

In the early 1980s women's rights advocates and conservatives found common ground in their desire for stricter sentencing and more aggressive prosecution of rape and sexual-assault crimes.<sup>427</sup> Their combined advocacy succeeded on several fronts, primarily through the passage of the Victims' Bill of Rights by the federal government and a majority of the states.<sup>428</sup> An integral aspect of the Victims' Bill of Rights was the adoption of the "victim-impact statement," which provides an opportunity for victims of crime to describe the emotional, physical, and financial impacts suffered as a result of a crime.<sup>429</sup> The Victims' Bill of Rights also requires victims to be notified of and participate in key court proceedings related to the crime, including parole hearings.<sup>430</sup>

For much of American history, victim-impact evidence was deemed inadmissible in death-penalty cases, because justices felt their inclusion would be irrelevant and inflammatory.<sup>431</sup> In 1991 the U.S. Supreme Court reversed itself, to the chagrin of many legal scholars, and allowed victims to make presentations in death-penalty cases. Victim-impact statements "appeal to the hatred, the desire for undifferentiated vengeance, and even bigotry," said DePaul law professor Susan Bandes.<sup>432</sup> "Moreover, in their insistence on evaluating the worth of the victims, victim-impact statements offend the dignity of the victim as well."<sup>433</sup>

Legal scholars rigorously oppose victim-impact statements, primarily because they have been shown to affect sentencing in both capital and non-capital cases.<sup>434</sup> There is even greater concern about the use of victim-impact statements in the parole process.<sup>435</sup> This is because victims rarely possess information relevant to the parole decision.

What defines a victim today? A child growing up without the love of his incarcerated father to tuck him in at night? A teen searching for belonging in a

poverty-stricken neighborhood devoid of recreation options and thriving schools? A mother struggling to care for her children while working as a night manager at a gas station, unable to afford the medication she needs to manage her serious mental illness?

Society has developed a broader understanding of the kaleidoscope of ways of viewing victimhood. As Equal Justice Initiative Director Bryan Stevenson so eloquently posited: "Each of us is more than the worst thing we've ever done."<sup>436</sup> In addition to recognizing the pain caused by some criminal behaviors, advocates also point to the utter failure of leadership that resulted in the suffering of entire communities having to endure dilapidated schools, crumbling infrastructure, and dwindling employment opportunities. Organizations such as Healing Justice emerged from an understanding that our criminal justice system is flawed, and capable of egregious mistakes. Rather than pitting people against one another, Healing Justice encourages dialogue for parties to gain deeper understanding of one another's perspectives.<sup>437</sup>

### **The need to increase fairness and equity in the parole process**

One of the most damaging legacies of the "tough on crime" era has been the adoption of so-called "truth in sentencing" policies.<sup>438</sup> These measures eliminated the use of parole-release mechanisms altogether, and mandated that individuals serve the majority, or typically at least 85 percent, of their sentences.<sup>439</sup> Individuals sentenced under this rubric are described as serving a "no-parole" sentence. Around the same time in the 1980s and 1990s, many states adopted mandatory-minimum and three-strikes sentencing legislation, both of which greatly enhanced punishments for violent and repeat offenders. Mandatory-minimum offenders were also precluded from being released early through the parole process.

In South Carolina today, approximately 64 percent of the prison population consists of individuals serving “no-parole” sentences.<sup>440</sup> This policy fails to differentiate between individuals who are determined to improve their behavior through participation in prison programming, abstaining from antisocial behaviors, or working at prison employment initiatives, and those individuals choosing to continue bad behavior. It deprives incarcerated people of the hope that making positive changes in their lives will result in the chance of an earlier release. This is in spite of the fact that a great deal of research has confirmed the notion that behavioral incentives in prison lead to vastly safer environments both inside prison and upon re-entry.<sup>441</sup>

## Parole best practices

In many states, including South Carolina, most parole board members are appointed with little to no background in parole or criminal justice issues.<sup>442</sup> For instance, in 2021 the South Carolina Parole Board included a pharmaceutical-company businessman and a doctor of optometry. Experts strongly recommend establishing a professional parole board, comprised of members with expertise in the field and fulsome annual training requirements on parole best practices.<sup>443</sup> Members should be prepared to make informed decisions based upon evidence of rehabilitation.

South Carolina legislators need to expand access to early release for all incarcerated people, providing guidelines to parole boards about how to make decisions equitably and fairly.<sup>444</sup> SCDC and PPP should adopt standardized criteria that reward people in prison for completing prison programs, and remaining disciplinary-free.<sup>445</sup> Such standards have been shown to improve prison security and reduce recidivism.<sup>446</sup>

Experts agree that parole hearings should be conducted in person.<sup>447</sup> Few

people would make the most important decisions in their lives, such as purchasing a home or hiring a key employee, without meeting face-to-face. Yet South Carolina often conducts parole hearings by video, depriving the parole candidate of the chance to make his or her case in person to the individuals responsible for making the determination about their freedom. Since the emergence of COVID-19, all hearings have been conducted from afar, an imperfect solution even as a short-term resolution to the challenges posed by a pandemic. Every parole-eligible candidate should have the right to an in-person hearing when such life-altering consequences are at stake.

The parole process in South Carolina also deprives incarcerated individuals of the right to contest inaccurate or biased information that can be used by the Parole Board to deny release.<sup>448</sup> South Carolina’s parole process provides prosecutors, law-enforcement officers, and victims the opportunity to testify in person at parole hearings, or to submit testimony for review by the board. However, currently, parole candidates are not allowed to review all of the testimony or documents provided to the board. As with any human endeavor, this testimony is subject to error and bias. Whether the error is an inaccurate conflation of issues, the blurring of memories over time, or the result of a simple mistake, the potential damage cannot be corrected under South Carolina’s current parole system. Parole candidates should have their due-process rights protected, first by providing the individuals with access to all testimony and documents submitted and relied upon by the board, and second by granting them the right to challenge and clarify inaccurate information.<sup>449</sup>

The current parole process in South Carolina is also heavily tilted in favor of keeping people in prison. At sentencing, a judge determines whether or not an individual should be given a parolable sentence. Ideally, a judge has made that determination with consideration given

to all of the facts and circumstances available. These include the testimony of the prosecutor, law enforcement, victims and their loved ones, expert assessments by mental-health or addiction counselors, defense attorney, defendant, and defendant's loved ones.

Therefore if an individual has been given a parolable sentence, the focus at a parole hearing should be on whether or not an individual has made progress with rehabilitation. In spite of this, South Carolina's parole structure and norms result in the board consistently giving far greater weight to factors which have already been reviewed, and giving short shrift to those factors that reveal a record of reform. Experts argue that testimony from prosecutors, police, and victims should be excluded in parole hearings, with the exception of the rare instances of improper communication or harassment of a victim by a parole-eligible individual.<sup>450</sup> Instead, the parole board should consider the feedback of individuals with access to incarcerated people on a regular basis, such as addiction counselors, correctional staff, or prison volunteers, as they can attest to whether an individual has truly changed behaviors over a period of time.<sup>451</sup>

According to respected organizations such as the Prison Policy Initiative, state departments of correction should begin assisting incarcerated men and women with individualized case plans for re-entry on day one of incarceration.<sup>452</sup> Case managers should meet with their clients as early as possible to assess potential problem areas, such as the need for addiction counseling, GED preparation, or mental-health services.<sup>453</sup> As these issues are identified, the case manager and client can collaborate to create a roadmap of programs and goals that will enhance the client's chances of being granted parole and improve their likelihood of success once released. As a parole hearing date grows near, case managers should also assist in connecting clients with potential housing

and employment, as well as with preparing for the hearing itself.

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***“When parole systems reject people for arbitrary and capricious reasons, they unintentionally, but to devastating effect, tell incarcerated people that their transformation does not matter. And the public, who is paying for the criminal justice system, deserves to know how it works and how well it works.”***

—Jorge Renaud, Prison Policy Initiative analyst

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One of the most oft-heard critiques of parole systems by both parole applicants and the general public is that they operate in secret, making decisions that are inconsistent and confusing.<sup>454</sup> “When parole systems reject people for arbitrary and capricious reasons, they unintentionally, but to devastating effect, tell incarcerated people that their transformation does not matter. And the public, who is paying for the criminal justice system, deserves to know how it works and how well it works.”<sup>455</sup> The South Carolina Parole Board has often been criticized by all parties involved in the parole process for its lack of consistency and transparency in decision-making. Victims report frustration with the process, as they struggle to understand the opaque decision-making process and are often kept waiting for many hours to testify. Family and other supporters of parole candidates are also kept in the dark, and often are denied the chance to speak for more than a few minutes, if at all, after driving long distances to testify on behalf of a loved one.

South Carolina enacted parole guidelines as part of the landmark sentencing-reform legislation in 2010, ostensibly to make the decision-making process more objective.<sup>456</sup> It is unclear whether board members place

much significance on other important factors, such as participation in programs, work experience, and other objective assessments of readiness for release, in addition to the nature of the original offense. As a result, the South Carolina Parole Board has established a clear pattern of denying release to a large percentage of individuals who have completed all required programming, have no major disciplinary infractions, and have housing and employment arranged for release. These parole applicants should be provided with a credible explanation for denial based on the list of objective factors, or they should be granted an appeal hearing.<sup>457</sup>

In order to rebuild trust and faith in the parole system in South Carolina, the legislature should bolster the oversight role of the South Carolina Department of Parole, Pardons and Probation (PPP) over the Parole Board. PPP should be required to draft detailed annual reports covering parole-release rates and the rate of deviations from recommended guidelines and assessments.<sup>458</sup> Parole boards should be required to explain their reasons for consistently denying release when guidelines recommend release.<sup>459</sup>

### **Revocation of parole and probation for technical violations**

As policymakers look for safe and effective ways to reduce their prison populations, many states have turned towards modernizing probation and parole policies that needlessly result in the return of many thousands of people to prison every year. Approximately 60,000 parolees were returned to state prisons in 2016, according to the Prison Policy Organization, not because they posed a danger to society, but because they committed minor infractions referred to as “technical violations.”<sup>460</sup> Examples of technical violations include missing a meeting with a parole officer due to a lack of transportation or unwittingly socializing with another person on parole. According to Josh Withrow of the conservative leaning organization Freedom

Works Foundation, “many states and localities need to reevaluate what offenses are actually worthy of sending a probationer or parolee to jail or prison.”<sup>461</sup>

A report by the Council of State Governments indicated technical violations comprise one in four admissions to state prison, at a price tag of \$2.8 billion in incarceration costs every year.<sup>462</sup> In South Carolina, as of 2018 people who violated some aspect of community supervision amounted to 17 percent of SCDC’s prison population.<sup>463</sup> On any given day, 3,173 people are incarcerated in South Carolina prisons as a result of a supervision violation, costing South Carolina \$74 million annually.<sup>464</sup>

FreedomWorks Foundation called the high rate of revocations of supervision in the U.S. for technical violations “a system that is not working.”<sup>465</sup> Experts have shown that revoking individuals for non-serious violations of probation or parole is both ineffective and very costly. Instead, finite state resources should be targeted at individuals during the periods when they are at the highest risk of re-offending. A study released in early 2021 shows that South Carolina could save more than \$64 million dollars and reduce its prison population by 1,302 people over five years by ending the policy of revoking parole and probation sentences for technical violations.<sup>466</sup>

The seemingly egregious treatment of rapper Meek Mill (Robert Rihmeek Williams) while on community supervision in Pennsylvania has made him a cause célèbre, and elevated the importance of parole-and-probation reform in the minds of many. In 2008 Meek Mill was convicted of illegal possession of a firearm, a misdemeanor offense in Philadelphia for which the typical sanction is a fine and house arrest.<sup>467</sup> Instead, the judge sent Mill to prison for two years, followed by eight years of probation.<sup>468</sup> In the ensuing eight years, Mill gained star power and recognition in the music industry and was positioned to perform at concerts all over the country.<sup>469</sup> That was until his probation officer deemed it a violation to leave the

state, even for employment purposes, and referred his case back to the judge who sent him back to prison for several months.<sup>470</sup> Upon release, he was subsequently punished for “cracking a wheelie” on his motorcycle, writing critical comments about his parole office on social media, and other perceived infractions, none of which posed any danger to the public.<sup>471</sup>

The Robina Institute, based at the University of Minnesota, has conducted extensive research into parole-and-probation practices.<sup>472</sup> According to its recommendations, states should front-load limited resources for community supervision on the time period immediately following release from prison.<sup>473</sup> Research indicates this is the most vulnerable period of time for people leaving prison, with many needing assistance with housing, employment, and beyond.<sup>474</sup> Focusing resources on this community of individuals will improve the likelihood of success for parolees. The Robina Institute and the Columbia University Justice Lab also recommend restricting the number of conditions placed on individuals during community supervision, and ensuring that each condition is individualized and necessary for addressing a targeted purpose.<sup>475</sup> Finally, Robina urges states such as South Carolina to reduce the amount of time individuals spend on parole altogether through the use of good-time credits or simply decreasing sentence times.<sup>476</sup>

Many states have already implemented successful reforms, reducing or eliminating the possibility that technical violations will result in a return to prison.

South Carolina has demonstrated the efficacy of reducing the number of individuals with technical violations who are returned to prison. As part of the reform package passed in 2010, S.B. 1154, South Carolina began using administrative remedies for minor violations of parole and probation in lieu of revocation.<sup>477</sup> As a result, the state saved an estimated \$39 million between 2011 and 2018 by revoking 1,633 fewer people from supervision. At the same time, both the

rates of violent and property crimes fell by 15 percent.<sup>478</sup> Given this record, it is clear that South Carolina should end the policy of returning people to prison solely for technical violations, saving lives and money for the state.

## Presumptive parole

To address these concerns, parole experts recommend the adoption of a “presumptive parole system.”<sup>479</sup> Presumptive parole allows for the automatic grant of parole to incarcerated individuals upon their earliest parole eligibility if they meet pre-set objective conditions and there are no credible reasons to deny them parole.<sup>480</sup> This process shifts the burden of proof to the parole board to provide valid reasons for why a parole-eligible individual should not be released.<sup>481</sup> This system requires state departments of corrections to offer a robust selection of prison programming, including educational, rehabilitation, and vocational opportunities, and ties the successful completion of these programs to the prospect of an earlier release from prison.<sup>482</sup>

Presumptive-parole systems also aim to minimize the subjective factors inherent in considering an incarcerated person’s readiness for parole, by eliminating the consideration of factors such as the seriousness of the original crime or comments from victims or prosecutors.<sup>483</sup> These factors were already considered by the sentencing judge at the time of conviction, and were used to craft a sentence the judge felt matched the facts and circumstances of the crime. Giving these same parties another “bite at the apple” to express their opinions at parole hearings unfairly shifts the focus away from its proper place: evaluating the individual’s current risk to public safety, rehabilitative progress, and readiness for re-entry into society.

Presumptive parole has been enacted in many jurisdictions to achieve cost savings, make release dates more certain, and, most importantly, to reduce prison populations

for the safety of prison staff, incarcerated populations, and society at large. According to the Prison Policy Initiative, thirteen states have instituted some type of presumptive parole.<sup>484</sup>

Effective presumptive-parole systems include elements such as these incorporated by Louisiana, Mississippi, New Jersey, Michigan and Hawaii.<sup>485</sup>

- Give clear instructions to incarcerated people on what they need to do in order to be released on a specific date.
- Give clear instructions to incarcerated people, if they are denied release, on what they need to do to be released at the next hearing.
- Require re-hearings in no more than one or two years.
- Provide case managers to help incarcerated people develop a plan to be successful at parole decision time.
- Provide transparency to incarcerated people by sharing as much information as possible about how the parole board reached its decision.
- Provide transparency and accountability to the legislative branch by requiring annual reports on the numbers of, and reasons for, denials of parole, especially denials of individuals whose release has been recommended by guidelines supported by validated risk assessments.

## Second Look sentencing

The majority of likely voters are supportive of policies that allow for periodic reviews of old sentences.<sup>486</sup> Second-look sentencing allows incarcerated individuals serving lengthy sentences to petition the court for a sentencing review after service of a given period of time.<sup>487</sup> This procedure provides an avenue for judges to reward individuals with earlier release when they have maintained disciplinary-free records, participated in prison programming, or served in leadership or mentorship roles.

The Model Penal Code recommends such a process to automatically review lengthy sentences in light of changes in people and societies.<sup>488</sup> The code suggests that a review be conducted by a panel of retired judges after an individual has served 10 or 15 years, in order to weigh the possibility of early release.<sup>489</sup> State departments of corrections should be required to assist incarcerated individuals in preparing for the review, and inform them of their review dates.<sup>490</sup>

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***“There are criminals who should be imprisoned, but using a one-size-fits-all approach benefits no one in the long run. We should trust our judicial system to make the appropriate determination for each offender.”***

—U.S Representative James Johnson, Delaware

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Delaware passed a justice-reform package in 2016 that included a second-look provision, allowing individuals convicted under three-strikes statutes to apply for a reduction of their sentences. Rep. James Johnson, a key sponsor of the bill, was prompted to push for criminal justice reforms after observing Delaware’s overflowing prisons.<sup>491</sup> Representative Johnson understood that punitive sentencing measures cut into other state policy priorities, and these laws did not make Delaware communities safer.<sup>492</sup> “There are criminals who should be imprisoned,” he has said, “but using a one-size-fits-all approach benefits no one in the long run. We should trust our judicial system to make the appropriate determination for each offender.”<sup>493</sup> Maryland, Washington, Pennsylvania, California, and New York have also created re-sentencing units to re-examine sentences that have been imposed to determine whether some should be reduced due to important factors such as age, medical condition, evidence of rehabilitation, or

simple disproportionality.<sup>494</sup>

Maryland's re-sentencing unit was spearheaded by State's Attorney Marilyn Mosby, out of a desire to redress past mistakes that filled state prisons with African Americans in far greater proportion than their percentage of the state population.<sup>495</sup> Arguing that prosecutors played an outsized role in creating the problem of mass incarceration, Mosby said prosecutors had a responsibility to rectify that wrong.<sup>496</sup> To accomplish that goal, Mosby hired former deputy public defender Becky Feldman, the person responsible for overseeing the release of 200 elderly incarcerated people after Maryland's Supreme Court decided the *Unger* case.<sup>497</sup> Feldman directed Maryland's DOC to identify incarcerated individuals with underlying medical conditions or advanced age, making them the most vulnerable to the coronavirus, and who pose little threat to public safety.<sup>498</sup> Many crime survivors have expressed support for measures such as these that invest more in rehabilitation services and less in punishment.<sup>499</sup>

### **Earned/time/good-time credits**

Experts recommend the expanded use of so-called "earned-time" credit programs. Commonly referred to as "good time," "meritorious credit," or "earned time," these policies shorten the time incarcerated people must serve before becoming parole-eligible or completing their sentences. Good time is doled out in units of time.

These programs are effective because they incentivize individuals to participate in meaningful programs, rewarding positive behavior and instilling a sense of hope for earlier release. Research shows that these programs improve behavior inside prisons, reduce prison populations, and improve public safety through lower recidivism rates.<sup>500</sup> Lawmakers in Nevada are considering legislation to expand access to "good-time" credits to address its spiraling prison population.<sup>501</sup>

According to the Prison Policy Initiative, many states have adopted overly restrictive policies for granting good time.<sup>502</sup> Research shows that these credits should be granted to all incarcerated individuals, regardless of conviction. Depriving some individuals of the potential for earlier release denies them hope, and creates perverse incentives for negative behaviors. There is enormous untapped potential for prison administrators to influence behavior in positive ways through the incentivizing of program and work participation, and through remaining disciplinary free.

In order to encourage participation in life-altering programs such as drug-treatment or GED programs, states must allocate sufficient funds for all programs in which completion is rewarded with earned-time credits. If incarcerated people must wait for months or years to enroll in programs that address addiction or improve employment prospects, this dis-incentivizes participation.

Research on sentencing best practices reveals that the most effective method for reducing recidivism is to use limited state resources to target high-risk individuals for intensive levels of treatment and services.<sup>503</sup> Many states today, including South Carolina, do the opposite: restricting programs to those prisoners who are close to their release date, a practice that research has demonstrated is often counterproductive.

It is a sad commentary on society that our prisons have largely become de-facto institutions to house the mentally ill. Approximately two million people with mental illness are booked into jails each year, and many go on to serve time in prison.<sup>504</sup> Prisons also house a large number of people suffering from substance abuse and addiction. According to a report by the National Center on Addiction and Substance Abuse, 65 percent of the nation's incarcerated population meets the criteria for substance abuse and addiction, yet only approximately 11 percent receive treatment for their addictions.<sup>505</sup> Given these appalling facts, states should ensure that individuals

with mental-health or addiction issues that preclude them from participating in prison programs should still be rewarded with earned-time credits.

SCDC officials should not react to minor infractions by revoking credits. Prison Policy Initiative's Jorge Renaud argues: "Prisons should refrain from revoking accrued good time except for the most serious of offenses, and after five years, any good time earned should be vested and immune from forfeiture."<sup>506</sup> Experts also recommend that if individuals do forfeit good-time credits, they should be given the opportunity to restore those credits if their behavior or actions improve over time.<sup>507</sup> The state of Alabama has embraced this concept. The commissioner of that state's Department of Corrections has the capacity to restore good-time credits upon the warden's recommendation.<sup>508</sup>

Good-time systems vary from state to state, with some choosing to grant a large amount of time off for "good behavior," and others, such as Montana, choosing not to take part in the system at all.<sup>509</sup> According to the Prison Policy Initiative:<sup>510</sup>

- Alabama can award up to 75 days credit for every 30 days served;
- Nebraska can award six months credit per year of sentence, and can grant an additional three days per month for clean disciplinary records; and
- Oklahoma can award up to 60 days credit a month, plus additional credits for various kinds of positive disciplinary records, and a number of one-time grants for various educational or vocational accomplishments.

In South Carolina, individuals that are parole-eligible can earn up to 20 days of "good time" per month, while those with "no-parole" sentences can earn just three days per month. Individuals given "mandatory minimum" sentences are not eligible for "good time" credits at all.<sup>511</sup>

## Retroactive application of sentence reduction reforms

Sentences are determined based on the laws in place at the time an individual is convicted. For a variety of complicated political reasons, states that have enacted sentencing-reform measures in recent decades have most often applied these reforms solely to future convictions. This choice to not apply reforms retroactively to those already in prison has created confusion, with individuals convicted of the same crime receiving drastically different sentences based solely on the timing of their convictions.

Sentencing statutes should be amended along with society's ever-evolving understanding of justice, and those already in prison should benefit alongside individuals sentenced after the enactment of reforms.<sup>512</sup> This is not just an issue of fairness, but also one of efficiency.

The negative ramifications of not making reforms retroactive have been repeatedly illustrated at the state and federal level. For example, in the aftermath of Congressional passage of the Anti-Drug Abuse Act of 1986, it became clear that the act resulted in wide disparities between the treatment of individuals convicted of possession of crack cocaine (more often than not people of color) vs. powder cocaine (usually white people), resulting in a pattern of much harsher sentencing for people of color.<sup>513</sup> Congress amended the law in 2010, but did not make its changes retroactive.<sup>514</sup> This left those who were sentenced under the former sentencing regime to continue serving sentences that were considered unjust in the eyes of Congress and society at large.

In spite of the powerful equity and efficiency arguments in favor of making sentencing reforms retroactive, the majority of states have failed to do so. In some cases, the courts have stepped in to require states to change their laws or implement systems for incarcerated people to apply for resentencing.<sup>515</sup> For instance:

- The U.S. Supreme Court reversed an earlier Florida court decision, declaring in 1963 that poor people who could not afford an attorney must be provided with one free of charge for most criminal cases.<sup>516</sup> The court also made this ruling retroactive.
- The U.S. Supreme Court has made the effects of other cases retroactive as well, including barring executions for offenses committed before age 18 and barring mandatory life-without-parole sentences for offenses committed before age 18.<sup>517</sup>
- State courts have occasionally made changes retroactive, such as the 2012 case *Unger v. Maryland*, which held that jury instructions in capital murder convictions prior to 1981 were flawed. The court ordered new trials for the approximately 130 individuals still incarcerated with life sentences.<sup>518</sup>

## Commutation

Another method in the state toolbox that should be utilized more often to reduce prison populations safely is commutation, the process available to the state executive branch of modifying a sentence in order to hasten eligibility for release, or granting release outright.<sup>519</sup> Commutations have rarely been used in the past, but, more recently, they have been embraced by experts as a method to address overly harsh sentencing policies of the past.<sup>520</sup> Governors and parole boards can modify sentences to make individuals eligible for release immediately, or at least at an earlier time.

In April 2021 Oklahoma Governor Kevin Stitt commuted the prison sentences of more than 450 people in order to reduce its prison overcrowding and improve the safety of those remaining in prison during the coronavirus pandemic.<sup>521</sup> Governor Jay Inslee of Washington state commuted the sentences of 950 incarcerated people, primarily to protect them from suffering a death sentence due to the virus.<sup>522</sup> To date, South Carolina

Governor Henry McMaster has resisted pressure to commute incarcerated people in the COVID-19 period. He would be wise to reconsider that decision, in order to protect frail aging and medically vulnerable people within SCDC.

## Compassionate release policies

In December of 2018 Congress passed and President Donald Trump signed into law the First Step Act of 2018.<sup>523</sup> The legislation broadened the opportunities for elderly and critically ill incarcerated individuals to be released from federal prison.<sup>524</sup> Once the COVID-19 pandemic swept across America, making our federal and state prisons and jails dangerous hotspots, Attorney General William Barr publicly directed the Federal Bureau of Prisons (BOP) to identify incarcerated people who could be safely released to home confinement and begin releasing those who posed a minimal threat to the public.<sup>525</sup> At the same time, however, the BOP altered the procedure for determining the risk of danger, making it harder for incarcerated people to be released.<sup>526</sup> As a result, of the many thousands of compassionate release applications that were submitted in 2020, 98 percent have been denied.<sup>527</sup>

States have always been the nation's laboratories; experimenting with various policies in search of the best approach. As the pandemic took hold in state prisons and spilled over into neighboring communities, state leaders began looking for methods to release individuals who were particularly medically vulnerable should they catch the virus, and who were determined to be at low risk to endanger public safety. They found that the majority of states have some form of special parole process, usually labeled as medical or geriatric parole rather than the term compassionate parole used at the federal level.

But lawmakers and advocates also have found that these policies are in reality a labyrinth of cumbersome and lengthy

requirements that prevent the vast majority of people from completing their applications prior to passing away.<sup>528</sup> Most states have passed statutes that require medical professionals to certify that the applicant has a very short period of time left to live, or is so incapacitated as to have lost the capacity to understand the reason for his or her incarceration.<sup>529</sup> Not only is it difficult for people in prison to get access to doctors willing to perform this analysis, but even those who manage to overcome this hurdle can be thwarted by ultimate decision makers who have the power to overrule the opinions of medical experts.<sup>530</sup> In addition, as of 2018, only three states were required to release to the public data on the release rate through these procedures.<sup>531</sup>

South Carolina law provides a compassionate release process for incarcerated individuals who are deemed eligible because of terminal illness, advanced age, or permanent incapacitation. However, each of these categories is exceedingly narrow, requiring licensed physicians to characterize an applicant as, for example, having “an incurable condition likely to cause death within two years,” or “being age 70 or older and suffering from a chronic infirmity” that has progressed and is incapacitating, such that he or she does not pose a threat to society.<sup>532</sup> According to the statute, South Carolina’s process must be initiated by the director of prisons, and reviewed by the full parole board. Individuals serving non-parolable sentences, comprising approximately 64 percent of SCDC’s prison population, are not eligible for any of these early release options.<sup>533</sup>

According to a report submitted by SCDC to the Sentencing Reform Oversight Committee in 2016, SCDC referred a total of 28 individuals for terminally ill, geriatric, or permanently disabled parole to the Parole Board for early release between 2011 and 2016.<sup>534</sup> Of that paltry number of referrals, just twelve were granted conditional parole, nine were rejected, two died prior to being adjudicated, and five were still pending

hearings as of the report.<sup>535</sup> There is no publicly available data on special parole releases since 2016.

Reforming these compassionate-release statutes is good policy notwithstanding the current global pandemic, as the human and financial costs of decades of mass incarceration are clear. The emergence of COVID-19 in prisons only makes that objective more imperative.

Baltimore’s State’s Attorney Marilyn Mosby initiated a review process in Maryland prisons prioritizing certain categories of the incarcerated population after COVID-19 threatened to endanger the lives of thousands of state prisoners.<sup>536</sup> The system focused on men and women age 60 or older who had served at least 25 years in prison on a life sentence; or had served 25 years or more for a crime committed before the age of 18; and have a documented medical condition placing them at higher risk of death if they contracted COVID-19.<sup>537</sup>

New Jersey Governor Phil Murphy, on the other hand, adopted a different kind of compassionate release to reduce sentences for more than 2,000 people in the prison system with the highest coronavirus death rate in the nation.<sup>538</sup> Murphy reasoned that reducing his state’s prison population would protect public safety in addition to saving the lives of many in prison.<sup>539</sup> The releases would continue on a rolling basis during the pandemic, including some adults and juveniles with less than a year left on certain sentences.<sup>540</sup>

Other states took different approaches to addressing the unique dangers posed by COVID-19 inside prisons. Virginia approved a budget amendment authorizing its department of corrections to release incarcerated people with less than one year left to serve on their sentence.<sup>541</sup> Colorado’s Governor Jared Polis issued an executive order relaxing the state’s prison-release policy during the pandemic.<sup>542</sup> Illinois leaders gave their prison director the power to expand the use of medical furloughs.<sup>543</sup>



## EVIDENCE-BASED RECOMMENDATIONS FOR SCDC

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**1. Vastly increase all types of prison programming, including educational, vocational, and rehabilitation programs.**

- Ensure that every incarcerated person has access to programs, regardless of the time remaining to be served.

**2. Create case plans for each person upon entry into prison, identifying goals for completing programs and preparing for re-entry into society.<sup>544</sup>**

- Preparation for release from prison must start at the beginning of a sentence and continue until release.<sup>545</sup>
- Implement validated risk/needs assessment tools early into a sentence to determine which programs are necessary to reduce the chances of recidivism.<sup>546</sup>
- Target limited resources at those assessed to be at the highest risk of recidivating and provide access to programs to address these issues.<sup>547</sup>

- Share records on program completion, risk scores, and other factors with the Parole Board.

**3. Pay every incarcerated person for the work he or she performs. Compensation should be equivalent to minimum wage outside prison.**

**4. In the short term, encourage individuals to volunteer their time and resources in state prisons. \*This should not minimize in any way the legal duty owed by the state to provide prison programming.**

Eliminate the many obstacles to volunteering inside prisons.

- Allow formerly incarcerated individuals to be screened in the same manner as other volunteers to enter prisons and implement peer-to-peer instruction.
- Replicate Allendale Correctional Institution's exemplary volunteer programs throughout SCDC, including programs training incarcerated people to teach and mentor others in prison.
- Provide financial and logistical support for programs initiated by volunteers.
- Establish regular communications between prison management and volunteers to brainstorm about methods to improve processes and programs. Allendale's Character Restoration Initiative (CRI) non-profit volunteer board can serve as a template for others to replicate.
- Dramatically streamline the process for approving prison programs

**5. Provide consistent access to visitation.**

- Prioritize in-person visitation at all times, and broaden access beyond weekends.
- Supplement with electronic visitation to ensure visitation during the pandemic and other potential disruptions.

**6. COVID-19 recommendations:**

Safely reduce the prison population.

Follow the example of at least 12 other states in prioritizing the inoculation of incarcerated people against COVID-19.<sup>548</sup>

**7. Streamline the grievance process and regularly review problems identified by incarcerated people prior to them ending up in the court system.**

- This would save precious state funds lost every year through successful medical malpractice, wrongful death, and other litigation against SCDC. From Fiscal Years 2015 to 2019, SCDC reported that 200 prison medical-related lawsuits cost the state roughly \$10 million in payments to victims of prison malpractice.<sup>549</sup>

**8. Require SCDC to open the “black box” of prison life to the public through expanded access to the media and advocates.**

- Mandate that SCDC open its doors to journalists and advocates by allowing them to make spontaneous, unannounced visits to prisons to observe conditions firsthand and interview incarcerated people and staff directly.

**9. Create a fully funded ombudsman position to monitor and address problems in SCDC, primarily focusing on issues with the provision of medical and mental-health services.**

- States including New Jersey and Washington have independent corrections ombudsmen, and others including Illinois have filed legislation to create an ombudsman position.<sup>550</sup>
- This position must be fully independent from SCDC.

# EVIDENCE-BASED REFORM RECOMMENDATIONS FOR SOUTH CAROLINA

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## **1. Eliminate the federal-funding stream that incentivizes the need to build and fill additional prisons.**

- President Joe Biden has promised to implement policies that will roll back the damaging sentencing laws he supported and voted for in the past, pledging to allocate \$20 billion in federal funds towards states that adopt evidence-based programs aimed at diverting people from incarceration and preventing crime.<sup>551</sup> States will be required to eliminate mandatory minimum sentencing, and adopt programs awarding earned-time credits for those currently incarcerated in order to get access to federal funds.<sup>552</sup>
- Cease supporting other policies that underpin America's over-incarceration problem.
- Stop using for-profit vendors in prisons.
- Eliminate mandatory minimum sentencing, and adopt programs to award additional earned-time credits for those currently incarcerated.

## **2. Greatly expand release mechanisms for all incarcerated people, including those convicted of violent offenses.**

- Use these measures to safely reduce the prison population.

- Invest resources in proven violence-reduction and recidivism-reducing programs.

## **3. End Juvenile Life Without Parole (JLWOP).**

- Join the list of 30 states, plus the District of Columbia, that have already banned JLWOP, or have no people serving a JLWOP sentence.

## **4. End the war on drugs, starting with legalizing marijuana for personal use by adults.**

- Virginia, Arizona, New Jersey, Montana, South Dakota, and other states approved the legalization of marijuana in the 2020 elections, while Mississippi legalized medical marijuana.<sup>553</sup>
- Oregon decriminalized possession of most drugs, including cocaine, heroin, and methamphetamines.<sup>554</sup>

## **5. Eliminate laws that indiscriminately punish people with lengthy sentences and restore judicial discretion in sentencing.**

- End mandatory-minimum sentencing, retroactively as well as moving forward.
- Cease three-strikes sentencing, retroactively as well as moving forward.

- Eliminate no-parole and truth-in-sentencing policies, retroactively as well as moving forward.

#### **6. Embrace restorative-justice policies across the entire spectrum of the legal justice system.**

- Study existing Victim-Offender-Dialogue programs along with other Restorative Justice opportunities to develop effective policies in South Carolina.

#### **7. Reform the state's broken parole system through implementing the following measures.**

- Establish a professional parole board comprised of members with expertise in the field and requirements for annual training on best practices.<sup>555</sup>
- Require that release decisions be based on evidence of rehabilitation using standardized criteria.<sup>556</sup>
- Conduct hearings in person.<sup>557</sup>
- Ensure parole candidates have access to all materials and testimony submitted for use in the decision-making process, and guarantee their right to challenge inaccurate or misleading testimony.<sup>558</sup>
- Shift the focus away from the "seriousness of original crime" which was already factored into crafting the original sentence.
- Require SCDC staff to work with incarcerated people at the beginning of a sentence by creating case plans and preparation goals for release.
- Instill greater transparency and openness into the parole process and decision-making.<sup>559</sup>
- Mandate that the parole board provide a reason for denial of parole from a list of objective factors.<sup>560</sup>
- Require PPP to publish annual reports on parole decisions, providing justification for deviations from objective decision-making factors.<sup>561</sup>

#### **8. End the policy of revoking parole and probation for technical violations.**

- Focus community supervision resources on the period immediately following release from prison.<sup>562</sup>
- Restrict the number of conditions placed on individuals during community supervision, and ensure each condition serves a valid purpose.<sup>563</sup>
- Reduce the time individuals must spend on parole or probation through the use of good-time credits or by simply decreasing sentence times.<sup>564</sup>

#### **9. Enact presumptive parole, allowing for the automatic grant of parole to incarcerated individuals upon their earliest parole eligibility if they meet preset objective conditions and there are no credible reasons to deny them parole.<sup>565</sup>**

- Require SCDC to offer a robust selection of prison programming, including educational, rehabilitation, and vocational opportunities, tying the successful completion of these programs to the prospect of an earlier release from prison.
- Minimize the subjective factors inherent in considering an incarcerated person's readiness for parole by eliminating the consideration of factors such as the seriousness of the original crime or comments from victims or prosecutors.<sup>566</sup>
- Require the parole board to identify the things a parole-eligible person must complete in order to be granted parole.<sup>567</sup> If this list is completed, the burden shifts to the parole board to show there is an objective reason to deny parole.

#### **10. Implement second-look sentencing to review lengthy sentences after an established period of time to weigh the possibility for early release.<sup>568</sup>**

- Washington, D.C. has adopted a second-look sentencing law, and other jurisdictions such as Florida, Maryland, New York, and West Virginia are considering passage of some type of similar legislation.<sup>569</sup>

**11. Expand the number of earned-time/good-time credits available and ensure that all incarcerated people are eligible, regardless of conviction.**<sup>570</sup>

- Ensure all incarcerated people have access to prison programs and work opportunities to accrue good-time/work credits towards release.
- Protect vulnerable populations, such as people with mental illness or addiction, from being denied earned time credits.<sup>571</sup>

**12. Make sentencing reforms retroactive in nature.**<sup>572</sup>

**13. Expand the use of commutations.**<sup>573</sup>

**14. Reform geriatric and medical-release policies to allow far more seriously ill and aging incarcerated people the opportunity to be released.**<sup>574</sup>

**15. Modernize medical and geriatric policies.**<sup>575</sup>

- Make compassionate release available to all incarcerated people, irrespective of the offenses for which they are incarcerated.
- Streamline all compassionate-release processes and set reachable deadlines so that petitioners don't die due to bureaucratic bottlenecks before they are released.

- Limit the ability of prison officials to overrule on medical grounds a recommendation of release by medical professionals.

**16. Additional Compassionate Release Reforms:**<sup>576</sup>

- Guarantee compassionate release for those with terminal illnesses and serious medical conditions.
- Establish consistent definitions for medical qualifications to compassionate release.
- Reduce the age threshold for eligibility compassionate release. Studies have shown people in prison age faster than their counterparts in the public. Lawmakers looking to expand their compassionate-release policies should consider this evidence when defining the geriatric population.
- Prepare those who are released for reentry. This means helping them secure proper health care in the community and find stable housing.
- Collect data on the number of compassionate releases and publicly release rationale for denying or approving relief. This could help increase accountability and expose inequity in release decision-making.
- Create a mechanism for seeking release via the courts. Since the passage of the First Step Act, people in federal prison can seek relief from the court if prison officials take too long to respond to requests for relief. South Carolina should consider similar reforms.

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The United States incarcerates far more people than any other nation on earth. Since the 1960s, policies of both Congress and U.S. presidents, Republican and Democratic, have led to the dramatic expansion of prison populations and steep cuts in prison programs and services. South Carolina's legislature has followed the national trend, enacting similar laws at the state level. The resulting spike in state incarceration rates has hit vulnerable Black and Brown communities the hardest. Researchers on the right and the left agree: South Carolina prisons are dangerously understaffed, offering the imprisoned little to prepare them for release. Without changes, more uprisings like that at the Lee Correctional Institution in April 2018 are inevitable.

After decades of commitment to these draconian policies, there is an emerging bipartisan consensus that the war on drugs and harsh sentencing regimes are both unsustainable and unwise. Research has proven that lengthy sentences do not deter crime; but these laws do devastate families and diminish state coffers. South Carolina continues to keep most people incarcerated well beyond the point at which studies show they can be safely released back into society.

The ripple effects of mass incarceration impact everyone. It is past time for sweeping changes throughout South Carolina's criminal-justice system. Everyone has a stake in improving the deplorable conditions within South Carolina's prisons and establishing a fairer, more just society through systemic reforms.

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