

Statement to the U.S. Senate’s Subcommittee on Criminal Justice and Counterterrorism

Joint Hearing On: “The Nation’s Correctional Staffing Crisis: Assessing the Toll on Correctional Officers and Incarcerated Persons.”

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Considerations for federal efforts to assist state and local law enforcement agency efforts to address the crime spike

Submitted by:

Rafael A. Mangual
Nick Ohnell Fellow
Policing & Public Safety Initiative
Manhattan Institute for Policy Research
52 Vanderbilt Avenue
New York, NY 10017

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Statement

Chairman Booker, Ranking Member Cotton, and all other members of this distinguished body, I'd like to begin by thanking you for the opportunity to offer remarks on this important topic.

The first duty of any government—whether local, state, or federal—is to keep its people and their property secure. One of the primary ways in which governments provide that security is through criminal justice systems. The police are the most visible elements of these systems, but they're certainly not the only ones. Indeed, their effectiveness depends in large part on other criminal justice actors. Prosecutors still need to prosecute, judges still need to adjudicate and sentence, and, crucially, correctional institutions need to secure and hopefully better the prisoners they take in.

Effectively managing a correctional population, however, requires investment. Unfortunately, we have seen throughout this country an unwillingness to adequately invest in corrections as decarceration—the pursuit of correctional population declines—has become both a policy priority in its own right, but also the preferred means of alleviating the pressures on the corrections system created by staffing shortages, facility maintenance costs, and overcrowding.

I'd like to use the remainder of my time to make three points:

First, decarceration—whether pursued as a public policy good unto itself or as a means of cost-saving—is not a cost-free endeavor. The downside risks associated with that project become more pronounced as you begin to move beyond the margins of the prison population.

Second, the potential cost-saving effects of decarceration—at least in the short and intermediate terms—are more limited than they might appear to be based on cost-per-inmate figures based on a division of total corrections spending by the imprisoned population.

Third, making the necessary investments in our criminal justice system to address issues like understaffing, overcrowding, and security concerns will not only help improve correctional outcomes, but will keep the government out of a position in which budget constraints require it to make choices that will ultimately harm public safety.

On the first point, most of the public safety risk associated with any significant-scale decarceration effort derives from the loss of incapacitation benefits—i.e., the beneficial effects of an active offender's removal from society which come in the form of crimes not committed as a result of the offender being behind bars. One study recently found that for the period 1991–2004, “each additional prison-year served prevented approximately” eight index crimes.¹ That estimate, which is somewhat conservative given that it is based in part on official crime counts (most crimes are not actually reported), is based on both state and federal prisoners. This is important to point out because the more-limited jurisdiction of the federal government (which lacks a general police power) means that the federal prison population consists of inmates who, on average, pose somewhat lower risks of recidivism. But even if lower than it is for state prisoners,

¹ <https://gspp.berkeley.edu/assets/uploads/research/pdf/p69.pdf>

the recidivism risk posed by federal offenders is far from zero. An analysis of more than 25,000 federal offenders released in 2005 found that just under 50% were rearrested over an eight-year observation period.² It's also worth noting that rearrest was closely associated with the age and criminal history of the releasees, as well as with the type of offense they were incarcerated for. For example, the study found that 68.3% of firearms offenders and 67.3% of robbery offenders were rearrested during the study period, compared to 34.2% of fraud offenders and 44.4% of larceny offenders.³

Some might be tempted to argue that the recidivism data for those released pursuant to the First Step Act (FSA) strengthens the case for decarceration; but those data do just the opposite. While it's true that only about 12% of FSA beneficiaries had recidivated according to the April 2023 FSA annual report, the recidivism data for FSA beneficiaries nevertheless illustrates the *limits* of relatively safe decarceration efforts with regard to just how many prisoners we can release without harming public safety. According to that report, a little over 29,900 federal offenders were released pursuant to provisions of the FSA.⁴ However, a closer look at the recidivism tables shows that nearly 9 in 10 (88.3%) of the more than 24,000 releasees who had a risk assessment were rated minimum (37.4%) or low (50.9%) risk.⁵ Nearly half of the releasees (which comes to less than 10% of the 2022 BOP population, and less than 1% of the national 2022 prison population⁶) didn't complete any recidivism reduction programming, which is notable because, in many cases, this was because they "were never designated to a BOP institution but rather served their sentence at a jail or pre-trial facility or were released due to time-served sentences."⁷ Moreover, the bulk of these offenders (more than 20,000 of them) had only been released for a year prior to that report's publication, meaning that their lack of rearrest may simply be a function of the short observation period.⁸

The much larger state prison population (more than two-thirds of which is in primarily for a violent or weapons offense⁹) poses an even more pronounced risk of recidivism, with 9- and 10-year recidivism rates for releasees breaking 80%.¹⁰

So while it is certainly the case that some small subset of the country's prison population consists of inmates whose incarceration no longer serves a legitimate penological end, we must also understand that the vast majority of prisoners in the U.S.—both state and federal—pose a significant risk of reoffending.

² https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2016/recidivism_overview.pdf

³ https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2016/recidivism_overview.pdf

⁴ <https://www.ojp.gov/first-step-act-annual-report-april-2023>

⁵ *Id.*

⁶ <https://bjs.ojp.gov/document/p22st.pdf>

⁷ *Id.*

⁸ https://assets.foleon.com/eu-central-1/de-uploads-7e3kk3/41697/first_step_act_methodology_vf.1f6848fb2e22.pdf?first-step-act

⁹ <https://bjs.ojp.gov/document/p22st.pdf>

¹⁰ https://bjs.ojp.gov/BJS_PUB/rpr24s0810yfup0818/Web%20content/508%20compliant%20PDFs and <https://bjs.ojp.gov/content/pub/pdf/rsorsp9yfu0514.pdf>.

As for my second point, it must be said that the costs savings potential of decarceration efforts may not be what they seem. It's often noted that it costs an average of over \$42,000 to incarcerate a single federal prison inmate for a year—a figure arrived at “by dividing the number representing the Bureau of Prisons (Bureau) facilities' monetary obligation (excluding activation costs) by the number of inmate-days incurred for the fiscal year, and then by multiplying the quotient by the number of days in the fiscal year.”¹¹ The problem with using this figure is that it might give the impression that you would save approximately \$42,000 a year by incarcerating one less inmate. That would be a massive overstatement because the lion's share of the average cost per inmate per year is a function of fixed costs—i.e., costs that aren't a function of how many inmates are incarcerated (think operation/administration costs associated with staffing, food, electricity, and debt service).¹² The marginal cost per inmate tends to be a much lower figure, albeit much more difficult to calculate.¹³

Not only are the potential savings associated with decarceration more limited, they are also going to be eaten into by the costs associated with the additional crimes that might occur as a result. Depending on the offense, these costs can be staggering. Indeed, the estimated annual cost of crime in the United States is in the trillions.¹⁴ A single homicide has been estimated to cost society nearly \$9,000,000, while an assault can carry a society price tag of more than \$107,000.¹⁵ Crime can also have other deleterious and costly effects that can be harder to see.¹⁶

Third and finally, the first two points weigh against dealing with the constraints posed by staffing shortages and other issues within the federal prison system by decarcerating and in favor of dealing with those constraints by investing in what is ultimately a core function of government. Despite the numbers that can be thrown around with regard to the cost of doing criminal justice in the United States, it remains the case that our criminal justice system is underfunded and in need of an upgrade—something my Manhattan Institute colleague Charles Fain Lehman thoroughly documented in a recent Manhattan Institute report, which

¹¹ [https://www.federalregister.gov/documents/2023/09/22/2023-20585/annual-determination-of-average-cost-of-incarceration-fee-coif#:~:text=Based%20on%20FY%202021%20data,%2437%2C012%20\(%24101.40%20per%20day\).](https://www.federalregister.gov/documents/2023/09/22/2023-20585/annual-determination-of-average-cost-of-incarceration-fee-coif#:~:text=Based%20on%20FY%202021%20data,%2437%2C012%20(%24101.40%20per%20day).)

¹² <https://www.vera.org/downloads/publications/price-of-prisons-updated-version-021914.pdf> (see endnote 10).

¹³ <https://journals.sagepub.com/doi/10.1177/08874034211060336>.

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<https://www.journals.uchicago.edu/doi/abs/10.1086/715713?journalCode=jle#:~:text=The%20estimated%20annual%20cost%20of,%243.92%20trillion%20net%20of%20transfers.>

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<https://www.journals.uchicago.edu/doi/abs/10.1086/715713?journalCode=jle#:~:text=The%20estimated%20annual%20cost%20of,%243.92%20trillion%20net%20of%20transfers.>

¹⁶ Other studies have shown impacts on mental health, student performance, economic mobility, and economic investment. See, e.g.,

https://tspace.library.utoronto.ca/bitstream/1807/99389/1/The%20impact%20of%20secondary%20exposure_Sha_rpe.pdf (showing that African Americans are disproportionately impacted by gun violence exposure in terms of their mental health); <https://www.pnas.org/doi/10.1073/pnas.1000690107> (finding that “Among African-Americans, the strongest results show that exposure to a homicide in the block group that occurs less than a week before the assessment reduces performance on vocabulary and reading assessments by between ~0.5 and ~0.66 SD, respectively.”); and <https://www.sciencedirect.com/science/article/abs/pii/S009411901730058X> (finding, among other things, that “a one standard deviation decline in violent crime as experienced during late adolescence increases the expected income rank in adulthood by at least 2 points.”).

recommended, among other things, “[r]ehabilitat[ing] failing prisons and jails.”¹⁷ The more conspiratorial-minded might wonder whether the failures that stem from inadequately resourcing the criminal justice system, which has drawn the ire of many reform activists and abolitionists, are the point. A stronger case for upending a system can be made when the institutions within it perform suboptimally; and institutions become more likely to perform suboptimally if they are inadequately resourced.

It is almost certainly the case that there are measures on which federal and state correctional authorities can perform better; but it is also likely the case that boosting performance and improving outcomes of interest will depend on the degree to which Congress and state legislatures are willing to direct resources to these institutions to facilitate such improvement. For example, in his report, Lehman noted that “as of the end of 2021... 24 states and the federal government still have prison populations over 90% of the lower bound for overcrowding; 12 have populations over 100%.”¹⁸ Yet, very little has been done to increase carceral capacity to address this very real problem, which can exacerbate others within prison walls. This is a political choice—one with dire consequences for those inside and, ultimately, outside of our nation’s prisons. We can and should choose more wisely.

Thank you.

¹⁷ <https://manhattan.institute/article/modernize-the-criminal-justice-system-an-agenda-for-the-new-congress>

¹⁸ <https://media4.manhattan-institute.org/wp-content/uploads/modernize-the-criminal-justice-system-an-agenda-for-the-new-congress.pdf>