



## Getting a New Lease on Life

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The United States incarcerates more people than any other nation on earth. According to the Bureau of Justice Statistics' most recent data, roughly 6,850,000 individuals were under some form of correctional supervision in the United States and over 2,220,000 of those were incarcerated in jail or prison. An estimated two and a half million children have at least one currently incarcerated parent. The vast majority of incarcerated people will return to society sooner or later – an estimated 650,000 come home each year – but many will not be prepared to move forward with their lives and will face additional obstacles to becoming successful on the outside, making recidivism more likely. National leaders now face the problem of mass incarceration.

The federal prison population is relatively small compared to state prisons and local jails. The most recent tally of federal inmates is just shy of 200,000 people. A large number, to be sure, but federal inmates make up less than ten percent of the incarcerated population. Any Congressional action will thus have limited direct effect on most of America's incarcerated people, but that doesn't mean Congress doesn't have a role to play in alleviating mass incarceration and its effects on society.

In the current Congress, the best shot at reform is a sentencing bill sponsored by Senate Judiciary Committee Chairman Charles Grassley (R-IA). (This is, in part, because other bills with far broader sentencing reforms – such as the SAFE Justice Act introduced by Reps. James Sensenbrenner (R-WI) and Bobby Scott (D-VA) – would not stand a chance in Grassley's committee.) The Grassley bill – known as the Sentencing Reform and Corrections Act – primarily benefits non-violent drug offenders. It would, among other things, broaden the current "safety valve" to allow judges to give sentences below federal guidelines for individuals with non-violent criminal histories and make certain previously passed sentencing reductions retroactive. It's a lot less than many advocates were hoping for, but it appears to be the best bill that might pass this session.

Of course, sentencing reform addresses individuals who will be tried and convicted of crimes. Congress can also influence, albeit indirectly, what happens before arrest and conviction. On this “front end” of the criminal justice system, a de-escalation of the war on drugs would lower the number of people going in to prison in the first place. This de-escalation doesn’t have to mean full legalization or even decriminalization. A future Congress could take steps toward de-escalation by removing federal incentives that encourage police departments to pursue and prioritize drug interdiction over other law enforcement functions.

For example, the Department of Justice currently has the authority to institute – and just reinstated – “equitable sharing” agreements with local law enforcement. Such agreements allow local police forces to profit directly from asset forfeiture – the taking of cash or property associated with alleged criminal activity – a practice that is common in drug cases. These agreements typically divide the funds 80/20 in favor of the local law enforcement agency. Thus, local departments may seek funds through enforcement, what the Institute for Justice calls “Policing for Profit.” Congress could repeal the DOJ’s authority to remit asset forfeiture proceeds back to local police departments and thus take away the federally enabled profit motive.

Congress could also amend the law enabling the Drug Enforcement Administration to establish drug task forces with state and local police agencies. The task forces are federally subsidized drug enforcement, which intrinsically creates an incentive to focus on drug interdiction rather than other aspects of policing. And very often, that enforcement is concentrated in poor and minority neighborhoods. The needs of a community alone should determine how that community allocates its law enforcement resources rather than federal money in order to lock-up more of that community’s most vulnerable citizens.

Finally, Congress could re-assess some “collateral consequences” of arrests and convictions. These include legal restrictions on voting, licensing, employment, and other benefits to individuals who at one time ran afoul of the justice system. The felony drug ban, for example, can limit food assistance to vulnerable people who are looking for work after serving a drug sentence. Drug convictions can also kick families out of public housing and make students ineligible for financial aid. These restrictions add hardship to already disadvantaged people and further marginalize them from society.

This is not to say that drugs and their attendant problems—such as overdoses, addiction-fueled crimes, and gang violence—are not important to communities. But decisions on the best way to deal with those problems will vary between states and localities, precluding a one-size-fits all federal intervention that typically focuses on interdiction. Specifically in response to the recent spike in heroin and opioid use, needle exchanges, supervised injection sites, opioid alternative treatments, and medical amnesty for overdose emergencies are ways in which local organizations and governments can help those in need without relying on law enforcement, and often without federal assistance.

The bulk of criminal justice reforms will have to come at the state and local levels because those governments are responsible for the majority of law enforcement. But Congress can set an example by reducing some of the harshest criminal penalties without being “soft on crime,” by removing unnecessary incentives that prioritize enforcement of consensual crimes, and by

tearing down punitive barriers that make re-entry harder for those who have made mistakes and paid their debt to society.

Many of the punitive state laws and policies followed the federal government's lead. Perhaps if Congress starts fixing their past mistakes, states will follow again.

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