

# Right on Crime:

## Increasing Family Prosperity via Criminal Justice Reform

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## A PRESSING NEED FOR REFORM

Many families seeking upward mobility and prosperity must first break the cycle of incarceration — a cycle that makes it nearly impossible for those caught up in it, ex-offenders in particular, to achieve productive lives for themselves and their families.

New national research shows that Rhode Island ranked just 48th on the 2016 Family Prosperity Index (FPI)<sup>1</sup> as well as just 48th on the Jobs & Opportunity Index (JOI).<sup>2</sup> In December 2016, the RI Center for Freedom & Prosperity, in conjunction with its national partner, the American Conservative Union, issued a 52-page RI Family Prosperity report that highlighted contributing factors to our state's poor rankings across 57 indexes.

Among other things, the report suggests that Rhode Island has room to modernize and improve its criminal justice system. Reforms put forth as part of the state's Justice Reinvestment Initiative (JRI) and by other organizations can lessen the harmful consequences of over-incarceration for Ocean State families:

- **S0005:** to request that the state government continue to seek ways to help Rhode Islanders return to productive activity after having been convicted of crimes
- **S0006 & H5065:** to add dedicated funding to an intervention program for domestic abusers, to make supervision more effective and humane through increased training and assessment, with more emphasis on government-driven manipulation toward "pro-social behaviors"
- **S0007 & H5063:** to increase and expand the reimbursements for which victims of crime are

reimbursed by the state, for example reimbursing families for funeral expenses of deceased victims and expanding the time to report crimes.

- **S0008 & H5117:** to modify the rules related to probation and violations thereof by, for example, allowing a punishment of only time served in cases of technical violations of probation and giving judges more flexibility when sentencing for guilty or nolo contendere pleas
- **S0009 & H5128:** to expand the ability of the parole board to take into account parolees' circumstances and behavior before incarcerating them for violations (with flexibility in the duration) and to expand the impact statements required for corrections legislation
- **S0010 & H5064:** to allow the state judiciary to create a diversion program, enabling defendants to make restitution in ways other than prison terms, to give judges flexibility in handling the sanctions for complaints, and to expand programs for pre-trial risk screening
- **S0011 & H5115:** to remove fines over \$1,000 as an automatic trigger for designation as a felony ease automatic designations of misdemeanors and petty misdemeanors, with specific exceptions/differences for assault and larceny

Rhode Island's dismal overall circumstances will only be improved if policymakers and civil society leaders are willing to join together to pursue needed reforms, one issue at a time, as highlighted in the state's FPI report. The status quo has obviously not been working for Ocean State families.

Outdated and overly harsh policies have done little to help Rhode Islanders and their families when it comes to criminal justice. Our policies have long-term consequences that ripple throughout time and

adversely affect children and families... generation after generation.

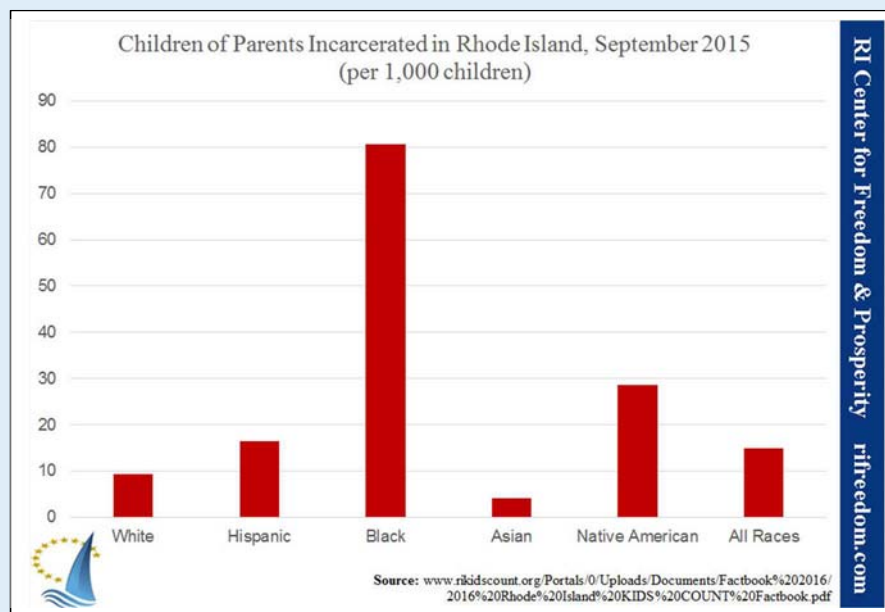
- **Poor, minorities, disproportionately incarcerated.** African Americans and Latinos make up 55% of those sentenced to prison in Rhode Island<sup>3</sup> while accounting for merely 22% of the population.<sup>4</sup> Disproportionate levels of incarceration may reflect either a racially biased criminal justice system or increased rates of criminal activity among minority populations — issues of concern in their own unique ways. Rhode Island has the 11th highest racial disparity rate between white and black residents.<sup>5</sup>
- **Critical family members embroiled in criminal justice system.** Of incarcerated females, 58% are mothers, and 56% of incarcerated males are fathers — with an average of two children per inmate.<sup>6</sup> For every mother or father incarcerated, children are growing up without two parents, putting them at increased risk of poverty and the development of negative behaviors.
- **No default criminal-intent statute.** Rhode Island’s vast network of regulatory laws can be

an impossible challenge to navigate. Rhode Island statutes prevent the unlicensed ownership of billiard tables, proscribe the use of certain terms in labeling eggs, and much more — placing residents at risk of unknowingly breaking the law and facing charges for innocuous actions.<sup>7</sup>

- **Children of incarcerated parents trapped in cycle of crime and poverty.** The children of incarcerated parents are significantly more likely to experiment with drugs, be in poverty, or be imprisoned themselves later in life.<sup>8</sup> The negative outcomes experienced by such children are disproportionately felt by minorities, due to the disproportionate rate of incarceration in minority groups (see figure below),<sup>9</sup> producing negative feedback loops in minority communities.
- **Probation.** Though Rhode Island has a low incarceration rate, it boasts the second-highest rate of probation in the United States. One in six adult African American males in Rhode Island is on probation.<sup>10,11</sup>
- **Overtaxed systems.** Probation officers are, on average, responsible for 116 active cases — not accounting for the 60% of probation cases that

## Incarcerated Parents by Race

*Given disproportionate incarceration rates in minority communities, minority children are more susceptible to the risks facing children with parents in prison — shockingly so among black children.*



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are not actively supervised. With such a high workload, it becomes increasingly unlikely that probation officers will be able to positively influence, guide, and supervise their cases.<sup>12</sup> The overburdened probation system is poorly equipped to reduce recidivism or effect positive change in communities. Of sentenced admissions to corrective institutions, 60% are the result of probation violations, with a significant proportion of those being the result of merely technical violations (29%).<sup>13</sup>

Conservative approaches to law enforcement have often focused on retributive and deterrent-focused mechanisms, such as fines and imprisonment, as well as support for harsh sentences for various crimes. The stability of a legal system is dependent on trust and confidence that laws are applied and enforced in a just and equitable manner, and laws must be enforced if they are to carry any weight. However, incarceration and crime can have long-term effects on families that may, in some ways, exacerbate the very problems that criminal justice systems seek to address.

The need for a new approach to criminal justice policy has become a widespread bipartisan focus in recent years. The Texas Public Policy Foundation, for instance, has spearheaded a movement known as Right on Crime — which seeks to make the criminal justice system more responsive, transparent, and efficient.<sup>14</sup>

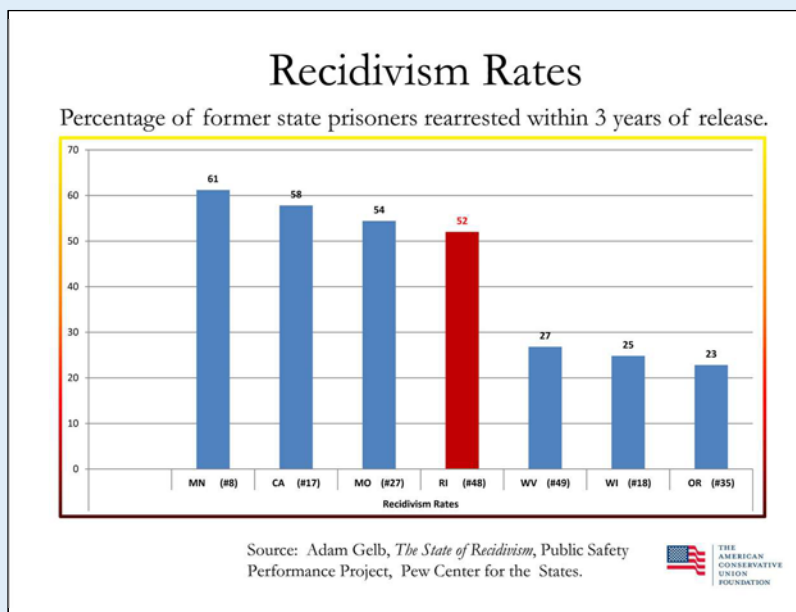
Incarceration affects not just the individuals incarcerated, but also their families and communities. In the long run, those who pass through the criminal justice system may fail to be fully reintegrated into society as they continue struggling to find jobs and to gather the social capital critical for long-term success. Meanwhile, the children of incarcerated parents suffer from poor educational outcomes and increased mental, emotional, and physical stresses and are at higher risk of poverty.<sup>15</sup> These factors make for a potent combination, inclining the children of incarcerated parents toward run-ins with the law.

National data shows that the children of incarcerated parents are five times more likely to commit crimes.<sup>16</sup> The current criminal justice

## Half of Rhode Island Prisoners Arrested Again Within Three Years

*Rhode Island does not succeed in setting released prisoners on a path to more productive lives.*

*(Note: Percentages in column labels are FPI rankings, not rankings of the chart's subject matter.)*



system may have inadvertently created a two-tiered class system, with those in poverty committing crimes at higher rate, and crime driving families into poverty.

Our criminal justice system is in desperate need of reform. Stable families play a critical role in society. Extensive research, such as that in the FPI, demonstrates that intact families provide myriad benefits to family members, their surrounding communities, and more. Two-parent households are less likely to raise children in poverty and more likely to provide consistently better educational, economic, and social opportunities.

Unfortunately, a prison-centric, excessively punitive approach to policing and law enforcement separates families, destabilizes communities, and undermines trust between community members and law enforcement officers. Widespread reforms may be necessary if Rhode Island's criminal justice system is to produce better outcomes.

## RHODE ISLAND'S CURRENT CONDITION

Compared with other states across America, Rhode Island tends to be a safe place. As American Conservative Union criminal justice expert David Safavian reported at a January 17, 2017, forum for the Family Prosperity Index (FPI), Rhode Island is well below average when it comes to the violent crime rate and below average for property crimes.<sup>17</sup>

Given that context, it isn't surprising Rhode Island has the *lowest* incarceration rate in the country. It is surprising, however, that the Ocean State's probation and parole rate is fourth highest. That, in

turn, leads to a high rate of recidivism, with 52% of former prisoners re-arrested within three years.

As researchers find to be true with other government programs, Rhode Island's cost to supervise and provide services to prisoners and parolees is high (over \$58,000 per prisoner). One might conclude that the state has an institutional bias against letting go of residents once they fall within its net of supervision.

That approach may serve the bureaucracy's bottom line, but it does not serve prisoners or their families.

## PUBLIC POLICY SOLUTIONS

Our research suggests a number of areas in which traditional approaches to policing and law enforcement might be reconsidered in order to effect positive change in Rhode Island's criminal justice system.

Sensible reforms must acknowledge two points. First, laws must be enforced, and criminals should be brought to justice. Incarceration is well warranted in many cases, especially when dealing with lawbreakers who pose an immediate threat to others. Second, we must recognize that crime issues are often multi-generational problems with deep-reaching roots in the socioeconomic and familial environments in which individuals are placed. A comprehensive approach to policing and criminal justice ought to consider these variables.

Many of these issues were addressed in a package of legislation known as the Justice Reinvestment Initiative (JRI) during the 2016 session of the Rhode Island General Assembly and reintroduced



this year. The bipartisan JRI package of bills unanimously passed the state's Senate both in committee and on the floor. It should be noted that the JRI resulted from a lengthy research effort spearheaded by the governor's Criminal Justice Reinvestment Working Group and the bipartisan Council of State Governments.

This working group, established by gubernatorial Executive Order #15-11 on July 7, 2015,<sup>18</sup> consisted of a comprehensive list of Rhode Island criminal justice stakeholders from law enforcement, the courts, corrections officers, probation and parole officers, criminal defense attorneys (both public and private), and community leaders.

However, the legislative session ended without the bills' making it to committee hearings in the House of Representatives, despite broad bipartisan support for the initiative.<sup>19</sup>

## Probation Reform

Rhode Island has, commendably, reduced its inmate population, and channeled many individuals into probation, allowing them to continue to live as part of their families and communities. However, Rhode Island's probation system remains woefully understaffed and under-supported, with only 40% of cases actively supervised and each probation officer responsible for over 100 active cases.

Probation officers are unable to provide the sort of meaningful supervision that could reduce recidivism rates and give increased oversight to high-risk probationers. Without effective oversight, probation is the equivalent of giving a mostly free pass to convicted criminals; with effective oversight, it can be a powerful way to restore

wayward individuals as productive members of their communities.

The JRI package of bills takes steps to do just this. Senate bill S0009 would, among other things, expand eligibility requirements for medical parole to allow terminally ill and incapacitated inmates to be placed on parole at an earlier date.<sup>20</sup> Senate bills S0006 and S008 specify increased oversight and stricter standards for parole and probation supervision.<sup>21, 22</sup>

## Sentencing reform

Rhode Island sentencing guidelines should be rewritten to ensure that we are not needlessly imprisoning criminals who are not a threat to society at large. Nonviolent criminals and those who have been determined to pose minimal risks to others should pay fines, be directed into community service or restitution programs, or otherwise redirected away from a potentially harmful, unproductive, and costly prison environment.

For those convicted of minor infractions, a prison stay can surround them with serious criminals, perhaps negatively influencing them. Additionally, imprisoning an inmate for a single year can cost Rhode Island taxpayers nearly \$50,000, according to a study by the Vera Institute for Justice.<sup>23</sup> A broad approach to sentencing reform could also include options to redirect non-violent criminals to drug or substance abuse rehabilitation programs, community service programs, or other alternatives to prison.

Again the JRI package addresses this issue. Senate bill S0011 raises the sentencing limits at which crimes must be designated as misdemeanors or felonies.<sup>24</sup> Senate bill S0010 would allow the

Superior Court to divert certain defendants to substance abuse rehabilitation or therapy programs instead of incarceration.<sup>25</sup>

## Mens Rea Reform

Rhode Island's penal code should include a default *mens rea* provision, holding that if a statutory law does not formally state otherwise, prosecutors must prove criminal intent in order to convict an accused citizen. Without this provision, Rhode Island citizens are at risk of arrest, prosecution, and even conviction for innocently pursuing behaviors that are not inherently wrong, including actions as innocuous as trading workout tips or rebuilding cars.

A criminal-intent provision, such as those introduced in the Rhode Island House of Representatives during the 2012 session and the Senate during the 2013 session would protect Ocean State residents from needless prosecution, and redirect law enforcement and judiciary time and efforts to addressing serious crimes.<sup>26, 27</sup>

## Overcriminalization

In concordance with *mens rea* and criminal intent reform, RI statutory law should be reviewed to remove foolish, outdated, and oppressive regulations. A survey of Rhode Island statutes reveals a vast number of such laws, as highlighted in a 2013 *GoLocalProv* article and the Rhode Island Center for Freedom and Prosperity's 2013 report.<sup>28, 29</sup>

Such outdated and overbearing laws create a complicated and overreaching legal bureaucracy that endangers innocents, restricts freedoms, and needlessly wastes law enforcement resources. Furthermore, overbearing regulations — such as

those requiring expensive licenses to work as a personal trainer or hairdresser — significantly curtail the abilities of reformed criminals or the impoverished to begin their own businesses, become financially independent, or pursue rewarding alternative careers.

## ACTIONS

The Center recommends for immediate consideration and adoption:

- A default “criminal intent” provision in statutory law to protect Ocean State citizens from unwarranted prosecution and harassment
- The six-bill criminal justice reform package introduced again in 2017 on the recommendation of the bipartisan Justice Reinvestment Working Group and the Council of State Governments. These bills stipulate more-flexible standards for incarcerating those on parole or probation, additional oversight mechanisms, and the ability to redirect certain individuals to substance abuse or mental health rehabilitative facilities.
- An immediate review of Rhode Island statutory law to remove unnecessary and oppressive rules and regulations. An overly restrictive and complicated regulatory regime places Rhode Island citizens at risk of violating laws by taking otherwise harmless actions and severely hampers the ability of the poor and disadvantaged to improve their standard of life through entrepreneurship and hard work. A comprehensive approach to crime, informed by the best research available, must prioritize keeping families together, and creating opportunities for upward economic mobility. An oppressive regulatory system does neither.

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