

**THE DIFFUSION AND ADOPTION OF JUSTICE REINVESTMENT  
ACROSS THE UNITED STATES**

by

Dana Beth Sorenson Holz

A dissertation submitted to the Faculty of the University of Delaware in partial fulfillment of the requirements for the degree of Doctor of Philosophy in in Urban Affairs and Public Policy

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Approved: \_\_\_\_\_  
Maria P. Aristigueta, D.P.A.  
Chair of the Biden School of Public Policy and Administration

Approved: \_\_\_\_\_  
John Pelesko, Ph.D.  
Dean of the College of Arts and Sciences

Approved: \_\_\_\_\_  
Douglas J. Doren, Ph.D.  
Interim Vice Provost for Graduate and Professional Education and  
Dean of the Graduate College

I certify that I have read this dissertation and that in my opinion it meets the academic and professional standard required by the University as a dissertation for the degree of Doctor of Philosophy.

Signed:

---

John McNutt, Ph.D.  
Professor in charge of dissertation

I certify that I have read this dissertation and that in my opinion it meets the academic and professional standard required by the University as a dissertation for the degree of Doctor of Philosophy.

Signed:

---

Jonathan Justice, Ph.D.  
Member of dissertation committee

I certify that I have read this dissertation and that in my opinion it meets the academic and professional standard required by the University as a dissertation for the degree of Doctor of Philosophy.

Signed:

---

Anthony Middlebrooks, Ph.D.  
Member of dissertation committee

I certify that I have read this dissertation and that in my opinion it meets the academic and professional standard required by the University as a dissertation for the degree of Doctor of Philosophy.

Signed:

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Eric Rise, J.D., Ph.D.  
Member of dissertation committee

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## TABLE OF CONTENTS

LIST OF TABLES .....	viii
LIST OF FIGURES .....	ix
ABSTRACT .....	x

### Chapter

1	INTRODUCTION .....	1
	What is Justice Reinvestment? .....	6
2	LITERATURE REVIEW .....	11
	Overview and history of criminal justice policy making in the U.S. ....	13
	Prison expansion by the numbers .....	14
	The social impacts of incarceration .....	17
	Prison expansion – policies .....	21
	Truth-in-sentencing, and the changing nature of probation and parole .....	22
	Determinate Sentencing.....	25
	Prisoner reentry and “Invisible punishments” .....	26
	Recent wave of criminal justice reforms .....	29
	Broader social, economic and political trends linked to increased incarceration .....	30
	Where does the greatest impact lie—locally, statewide, or federally?.....	32
	Justice Reinvestment .....	35
	What is Justice Reinvestment? .....	36
	Who is involved? .....	45
	Justice Reinvestment in context: the social, political and academic roots of the justice reinvestment movement .....	49
	New Federalism.....	49

	The “what works” and “smart on crime” movements .....	51
	Conservative and liberal approaches to crime .....	56
	Prior criminal justice policies .....	58
	Criticism, support, and recommendations for change .....	59
	The diffusion and adoption of policy innovations.....	70
	Prominent diffusion studies .....	71
	Policy characteristics and diffusion.....	78
	Criminal justice policy diffusion .....	84
	Policy entrepreneurs and federal funding during a “window of opportunity” .....	90
	Theoretical Framework .....	100
	The “unified model” of policy adoption and diffusion .....	101
	Internal Determinants of Adoption.....	102
	Motivation - Severity of the problem .....	102
	Availability of resources.....	103
	Diffusion Variables -- External Characteristics .....	105
	National interaction .....	105
	Vertical influence .....	105
	Research statements.....	107
	Additional variables.....	109
3	METHODOLOGY .....	113
	Operationalization of Variables.....	116
	Results .....	121
	Zero Order Correlations .....	121
	Regression Analysis .....	124
	Discussion.....	133
4	CONCLUSION .....	138

Incremental approaches and the desire for broad social change .....	140
Implementation and fidelity .....	143
Policy innovation and policy entrepreneurship in criminal justice reform ....	146
REFERENCES .....	148
Appendix	
A STATE ADOPTION OF JUSTICE REINVESTMENT INITIATIVE 2003-2019 .....	166
B CODEBOOK .....	171

## LIST OF TABLES

Table 1. Correlation of dependent and control variables, 2003 .....	122
Table 2. Correlation of dependent and control variables, 2007 .....	123
Table 3. Descriptive Statistics for Variables Predicting State Adoption of Justice Reinvestment, 2003 .....	126
Table 4. Regression Analysis Summary for Variables Predicting State Adoption of Justice Reinvestment, 2003 .....	128
Table 5. Descriptive Statistics for Variables Predicting State Adoption of Justice Reinvestment, 2007 .....	130
Table 6. Regression Analysis Summary for Variables Predicting State Adoption of Justice Reinvestment, 2007 .....	132



**LIST OF FIGURES**

Figure 1. Imprisonment rates of sentenced prisoners under the jurisdiction of state and federal correctional authorities, per 100,000 U.S. residents, 1978-2017 15

Figure 2. Timeline of events of state and federal policy actions related to justice reinvestment .....41

## **ABSTRACT**

Justice reinvestment is a criminal justice policy process that has been widely adopted in the American states over the past two decades. With an explicit focus on downsizing prisons, evidence-based decision-making, and the local and contextual aspects of crime, it is a unique policy innovation that differs greatly from much of the criminal justice policymaking that has occurred over the past fifty years. Much of the diffusion of justice reinvestment has occurred through the Justice Reinvestment Initiative, a public-private partnership between the U.S. Bureau of Justice Assistance and several nonprofit organizations. This research examines the internal determinants of state adoption, employing a multivariate statistical model to examine the predictors of state adoption of justice reinvestment during two time periods—at the time of the conception of the idea in 2003 and after federal funding and the creation of the Council of State Governments Justice Center in 2007. The results of the latter model showed that states with higher innovativeness scores were less likely to adopt the Justice Reinvestment Initiative. These findings suggest that the Justice Reinvestment Initiative may be appealing to states that do not have the capacity and the readiness to implement far-reaching criminal justice reforms, and are less likely to create innovative criminal justice reforms on their own.

## **Chapter 1**

### **INTRODUCTION**

Justice reinvestment is a policy innovation that has emerged over the past decade and a half that has quickly caught the attention of American policymakers. The purpose of this research is to identify the factors that have influenced the adoption and diffusion of justice reinvestment strategies in the American states since the idea was first conceived in 2003 to the present year (2019). For nearly four decades the prevailing stance towards crime policy has been “tough on crime” approaches. Under the mantra of being “smart on crime,” proponents of justice reinvestment argue that justice reinvestment is a policy process that can downsize prisons while maintaining public safety. Since justice reinvestment was first conceptualized in 2003 in a monograph published by the Open Society Institute (Tucker & Cadora, 2003), currently four out of five American states have adopted justice reinvestment approaches. All but two of these states have implemented this process with technical assistance from at least one of the nonprofit organizations that are involved in the Justice Reinvestment Initiative. This initiative is a public-private partnership, that includes financial support from the federal Bureau of Justice Assistance (BJA), and technical assistance from a number of prominent national nonprofit organizations—the

Council of State Governments Justice Center, the Pew Center on the States, and the Urban Institute chief among them.<sup>1</sup>

Walker (1969) defined a policy innovation as “a program or policy which is new to the states adopting it, no matter how old the program may be or how many other states may have adopted it” (Walker, 1969, p. 881). In addition to fitting this criteria, justice reinvestment can be considered a unique policy innovation as it differs from prior criminal justice policies in four ways: (1) it is a process by which a range of policies may be enacted, rather than a specific policy; (2) there is an emphasis on data collection and evidence gathering to guide decisions; 3) there is an explicit emphasis on reducing the use of prisons; and (4) there is an emphasis on understanding the local, contextual and spatial aspects of crime and incarceration. Given that justice reinvestment is an innovative approach to criminal justice policy, that stands apart from much of the criminal justice policies that have been crafted over the past few decades, the factors that have aided in its adoption across the American states warrants scrutiny. A greater understanding of the policy process that led to the translation of an innovative idea into program and policy adoption and implementation across a wide

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<sup>1</sup> Varying sources provide different counts of the states that have implemented justice reinvestment approaches. Information about adoption was drawn from the following sources: The Council of State Governments Justice Center, the Pew Public Safety Performance Project, the Urban Institute, the National Conference of State Legislatures, and Vera Institute of Justice. Two states, Illinois and Colorado, have passed legislation that used justice reinvestment terminology but they did so without the involvement of the national partners that make up the Justice Reinvestment Initiative.

variety of states should be of interest to the many scholars who have lamented the United States' use of incarceration as a social control strategy and have openly expressed the need for reform.

Karch (2007) suggested that "Diffusion is about the movement of policy across jurisdictional boundaries. In contrast, adoption is the decision to establish a policy in an individual jurisdiction" (Karch, 2007, p. 56). The literature review and analysis will examine both the characteristics of individual states that may have contributed to the decision to adopt justice reinvestment approaches, and some of the factors that have helped aid in the diffusion process. This research should contribute to the very limited literature on the diffusion and adoption of criminal justice policies. Bergin (2011) identified only 23 studies of criminal justice policy diffusion over a 49-year time period; of these, over half were focused on just one policy area. As noted by many scholars in the field of criminology, there is a need for better understanding of how criminal justice policies are created, and how they spread throughout the country (Clear, 2009; Barker, 2006; Lynch, 2011; Stemen, 2007). While there is substantial academic debate about the drivers of mass incarceration, particularly at the federal level (as examined in the literature review), very few studies take into consideration the state and local level characteristics that influence policymaking. In addition, most of this research comes from the sociological tradition (see: Tonry, 2004 and 2009, for an analysis of these explanations); research and theory from the public policy and political science fields are under-utilized to examine criminal justice policymaking. Within the criminological community there seems to be a near consensus that the

status quo is untenable, and that reform is needed, yet there is little literature available on how to create and pass policy that would bring such reforms. This research should help contribute to the criminological literature by providing greater insight into some of the factors that contribute to decisions to adopt criminal justice reforms.

Walker (1969), in one of the first studies of policy diffusion, suggested that one avenue of possible research is an examination of the work of organizations such as the Council of State Governments in order to determine whether they speed up the rate of diffusion by providing political networking opportunities where state leaders can learn from one another. Fifty years have passed since Walker's publication and very little research has been done on professional networks, in general. A literature review of policy diffusion studies that specifically incorporate the Council of State Governments as part of the analysis, specifically, identified no existing research. This organization, founded in 1933, is the only professional networking organization in the United States that connects all three branches of state governments through annual and regional conferences, publications, and leadership development opportunities. Considering that the Council of State Governments is a well-established organization that is positioned to influence so many leaders of state government, it is surprising that the role that they play in the diffusion of policy innovations has not been explored to a greater extent. The Council of State Governments is also a worthy topic of examination because it provides expert research and technical assistance, in addition to networking opportunities, to the states. An examination of the role it plays in the diffusion and adoption of justice reinvestment will also add to the very limited policy

diffusion literature that focuses on national interactions and policy entrepreneurship, both of which, according to Karch (2007) in his review of the literature, are promising avenues to explore in policy diffusion research.

This research draws upon Berry and Berry's (1999) "unified model of state government innovation" (p. 237) in the examination of adoption and diffusion of justice reinvestment to the American states. Their review of the resources and literature related to justice reinvestment suggested that most of the diffusion of the idea can be attributed to two factors, the national organizations that play a prominent role in all aspects of the justice reinvestment process (what Berry and Berry defined as "national interactions"), and the funding from the federal government that is available to states to fund justice reinvestment programs ("vertical influences"). However, as Berry and Berry explained, it is likely that a multitude of variables have influenced the adoption of the justice reinvestment, ranging from state level characteristics to national trends and events, culminating in what Kingdon (1984) referred to as a "window of opportunity" for reform. The initial goal of this study was to examine both the diffusion process and adoption of the Justice Reinvestment Initiative, however, research constraints prohibited an analysis of diffusion variables. As such, the following question, representing the factors involved in policymakers' decisions to adopt the Justice Reinvestment, represents the central research question that guided this study.

*RQ<sub>1</sub>: What are the determinants of the adoption of justice reinvestment as a policy process in the states?*

## **What is Justice Reinvestment?**

The Council of State Governments Justice Center plays a key role in the dissemination of information about justice reinvestment and provides resources and technical assistance to states as they implement the Justice Reinvestment Initiative. They defined justice reinvestment as “a data-driven approach to improve public safety, reduce corrections and related criminal justice spending, and reinvest savings in strategies that can decrease crime and reduce recidivism” (n.d.). The term justice reinvestment is used in this paper when it is discussed as an approach and a concept; the term Justice Reinvestment Initiative is used when referring to the nationally organized initiative which involves a partnership of several national nonprofit organizations and the federal Bureau of Justice Assistance. These organizations provide one or more of the following to the states that are involved in the Justice Reinvestment Initiative: resources, information, technical assistance, direct service, and funding. All but two of the states that adopted justice reinvestment approaches have done so through the national partnership that makes up the Justice Reinvestment Initiative.<sup>2</sup>

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<sup>2</sup> Thirteen states were involved in justice reinvestment strategies prior to the formalization of the Justice Reinvestment Initiative in 2010. Since they participated in justice reinvestment with the aid of the organizations that later participated in the Justice Reinvestment Initiative, they are considered as participating in the Justice Reinvestment Initiative for the purpose of this research study. Illinois and Colorado passed reforms through a justice reinvestment process, but did not do so through the Justice Reinvestment Initiative.



The Justice Reinvestment Initiative does not look the same in every location, but certain key features are widespread. The process generally begins with the creation of a bi-partisan working group or commission, created through a Senate or House Resolution or Executive Order. This group petitions for funding and technical assistance from one or more of the national organizations that are involved in the Justice Reinvestment Initiative. These organizations provide states with support for data collection and analysis. They also provide states with information on best practices and evidence-based programs that have been gathered from program evaluations of existing programs throughout the states. A thorough overview of the state's criminal justice system is conducted by the workgroup, in tandem with the technical assistance provider, and inefficiencies in the criminal justice system are identified. In addition, this workgroup may also collect data on high incarceration and crime areas to focus attention on gaps in services and resources that may contribute to high crime and/or recidivism rates. These data are reviewed by the workgroup, which then generates policy recommendations with the goal of improving the functioning, efficiency and safety of the prison and community corrections systems, based on the findings.

Central to the justice reinvestment philosophy, as initially conceived, is the idea that counties and cities, which operate on the front-end of all criminal justice actions (i.e., arrest, prosecutorial, and judicial decisions) have historically lacked any incentive to maintain low-level offenders within their own communities. Because these localities generally bear the costs of county jails and community corrections,

they often find it more expedient and cost-effective to send offenders to state prisons. Proponents of justice reinvestment argue that effective recommendations should be locally targeted, and context-specific. Through the justice reinvestment approach, workgroups across the states have identified ways to incentivize the use of county jails and community corrections for low-level offenders, with the goal of reserving costly state prison beds for serious offenders. Often the policy recommendations created by the workgroups include a blend of policy changes, including: improved state data collection systems; better risk and needs assessment tools; funding for improved technologies; restructuring of sentences for low-level offenders; greater flexibility given to probation officers to enforce sanctions for violations of probation; and, funding for substance abuse and mental health treatment. Savings realized from reduced prison admissions are, in theory, to be returned to local governments and/or reinvested back into the community. How this is practiced varies from location to location, but ranges from investment in community-based organizations that serve ex-offenders and their families, to broader community investments in resources not specifically designed for people who have been involved with the criminal justice systems (education, job training, investments in local institutions, etc.). One of the major critiques of the Justice Reinvestment Initiative is that the goals of justice reinvestment have strayed since the formulation of the concept, and reinvestment is not occurring to the degree that early proponents hoped (see Austin et al., 2013, for one example).

Justice reinvestment emerged as a policy option only within the past decade and a half, and scholars are only recently beginning to evaluate its effectiveness (LaVigne, et al, 2014; Brown et al., 2016). Because the justice reinvestment process generally results in a package of policies presented to state legislatures, of which only a few may be enacted, it is also difficult to compare the results of one state with another. However, the process by which justice reinvestment has come to the attention of federal, state, and local governments, deserves serious attention. Prison admissions with the United States have increased dramatically over the past forty years, rising even in times of falling crime rates (Paternoster, 2010). Today, the United States has the highest rate of incarceration in the world at 655 inmates per 100,000 of the national population, far exceeding the average national incarceration rates of the majority of the world (Walmsley, 2018). For decades, academics, activists and others have decried America's reliance on mass incarceration to maintain social order, noting the financial, cultural, and social costs of maintaining such a system. While opinions about how and why the United States has arrived at this particular problem are various and widespread (see literature review), it is clear that the decisions of policymakers over the past decades has contributed greatly to this expansion. As such, justice reinvestment is a curious change in direction from this decades-long trend of punitive policies. While it is too soon to know if it will accomplish a significant reduction in the United States' incarceration rate, it still provides important opportunities to examine what it is about this approach that has appealed so broadly to state and federal policymakers, despite its seeming differences from past trends in criminal justice

policy. A more thorough understanding of the policy process behind justice reinvestment, may help identify the ways in which innovative ideas related to criminal justice policy can be translated into policy and diffused to the American states.

## **Chapter 2**

### **LITERATURE REVIEW**

The purpose of this research is to identify the factors that have influenced the adoption and diffusion of justice reinvestment strategies in the American states from initial conception to the present time (2003-2019). To best understand justice reinvestment—why it may appeal to policymakers, what it promises, and why it has been adopted so broadly, during such a short amount of time—it is necessary to tie the advent of this policy innovation into an historical context. The first part of this literature review will provide a brief history of significant public policies that have had an impact on the growth of the prison population in the United States over the past forty years. The steep increase in the United States’ use of incarceration has been a subject of much academic scrutiny over the past few decades, with many scholars raising objections to the use of “mass incarceration” as a social control strategy in the US. Multiple scholars have theorized about the underlying reasons behind these changes in policies, and some of the main perspectives about what may have driven this direction in policy is summarized in this chapter. This review of the research suggests that changes in U.S. penal policy over the past four decades have led to significant unintended consequences for families, communities and society writ large.

The second section of this literature review will examine justice reinvestment in depth, beginning with a description of justice reinvestment as an innovative approach to criminal justice policy-making, rather than as a single specific policy. The section includes details about how the idea emerged, the underlying concepts and philosophies that are central to this approach, and the various ways that justice reinvestment has been implemented in different states. National organizations have had an important and prominent role in the expansion of justice reinvestment, and this role is detailed within the chapter. Summaries of the critiques of justice reinvestment—both positive and negative—from scholars, practitioners, and others are included in this section.

The final section outlines the argument for justice reinvestment as a policy innovation details why the diffusion of justice reinvestment is an important focus of study. This section begins with an overview of the diffusion literature, with a particular emphasis on the limited literature that exists on the diffusion of criminal justice policies. There is reason to support the examination of criminal justice policies apart from other public policies, as some research indicates that many of the criminal justice policies that are linked to the expansion of the American prison population over the past four decades diffused rapidly, with little to no learning period before enactment (Mooney & Lee, 2001; Nicholson-Crotty, 2009; Stemen, 2007). Second, the two overarching conceptual frameworks that guide this research—Berry and Berry’s (1999) “unified model” of policy diffusion and adoption and Kingdon’s (1984) multiple streams model—are summarized in this section. Although coming

from different traditions, the two approaches are quite compatible, and provide insight into the determinants of state adoption of justice reinvestment. The review of existing documents related to justice reinvestment suggests that the majority of the diffusion process can be traced to two factors: (1) the national organizations that played a key role in the conceptualization of justice reinvestment and also provided information, technical assistance and resources to the states, and (2) the technical and financial resources provided by the federal government to states that implement the Justice Reinvestment Initiative. However, there are likely many factors at play in states' decisions to adopt justice reinvestment, and it is likely that a convergence of factors have contributed to a "window of opportunity" (Kingdon, 1984) for reform. Drawing from prior research in the fields of public policy and criminology, a list of variables that may have contributed to policymakers' decision to adopt justice reinvestment are included in this section, and provide context for the variables selected for inclusion in this study.

### **Overview and history of criminal justice policy making in the U.S.**

For over four decades the prison population in the United States has increased. At this point, the US leads the world in the number of people incarcerated; in most cases, it leads by a very large margin. Increasingly, scholars have demonstrated that an over-reliance on incarceration may have little deterrent effect on crime, and may in fact have unintended consequences that negatively impact families and communities

touched by crime and incarceration (see Braman, 2004; Rose & Clear, 1998; Western, 2006; and, Sampson & Loeffler, 2010, for just a few examples). The first part of this section on criminal justice policy provides a select review of some of the major arguments that reform is needed of the current U.S. criminal justice system. The next section includes details about some of the reasons why prison expansion has occurred so rapidly in the United States, focusing primarily on “tough on crime” policies that have been crafted over the past four decades. The conclusion of this section demonstrates how justice reinvestment fits into this broader historical and social context.

### Prison expansion by the numbers

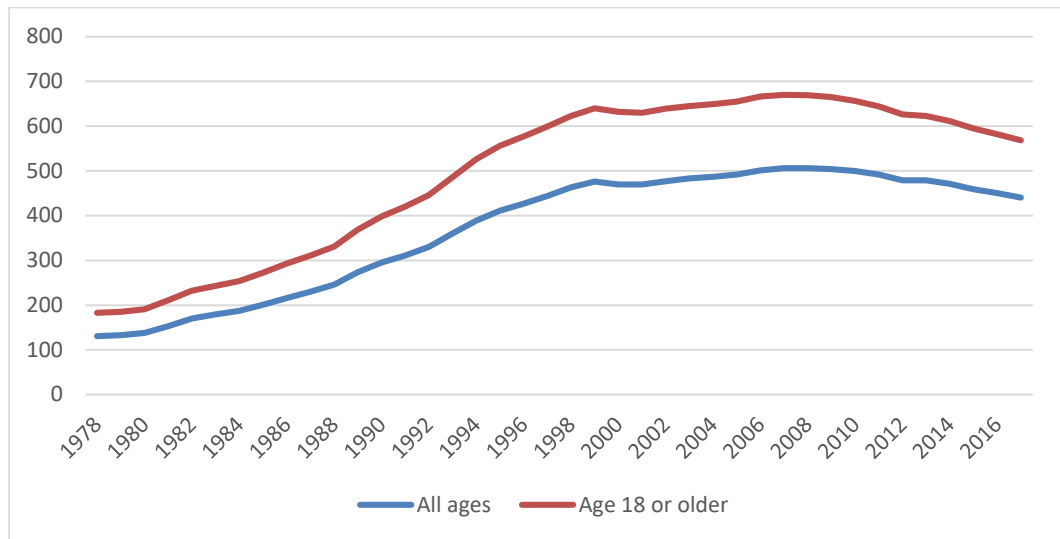
Over the past forty years the United States has seen a dramatic increase in the number of people incarcerated in prison and jail facilities, or otherwise under the surveillance of the government through probation, parole or work-release programs (see Figure 1). Today, the United States has the highest rate of incarceration in the world at 655 inmates per 100,000 of the population. This is extremely high considering that 53 percent of all countries have rates below 150 inmates per 100,000 (Walmsley, 2018)<sup>3</sup>.

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<sup>3</sup> The U.S. Bureau of Justice Statistics (BJS) reports separately on the number of inmates in prison systems and jail systems; prison sentences typically being a year or more. This is complicated by the fact that a few states have integrated correctional systems that hold both jail and prison populations. BJS reports a rate of 440 prisoners



Figure 1. Imprisonment rates of sentenced prisoners under the jurisdiction of state and federal correctional authorities, per 100,000 U.S. residents, 1978-2017



Source: Bureau of Justice Statistics, National Prisoner Statistics, 1978–2017; and U.S. Census Bureau, post-censal resident population estimates for January 1 of the following calendar year

In nearly forty years (1973-2010), the number of people in prison grew from 200,000 to over 1.6 million (Travis, 2005, p. 23; Guerino, Harrison, & Sabol, 2012). In addition to the large number of people incarcerated in state and federal prisons, the Bureau of Justice Statistics reported that in 2017 there were 745,200 inmates in jail facilities (Zeng, 2019), with a total of nearly 2.23 million people in the United States behind bars in 2017 (Zeng, 2019; Bronson & Carson, 2019). In 2016, approximately

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per 100,000 in 2017 (Bronson & Carson, 2019). Walmsley, at the International Centre for Prison Studies, reports on both jail and prison inmates, and therefore has a higher prison population rate.

4,586,900 individuals were under the supervision of probation and parole offices, an estimated 1 in 55 adults in the US (Kaeble, 2018). In 2010, the United States prison system saw its first decline in prison populations since 1972, after nearly forty years of steady expansion. Despite this small decrease in overall prison admissions, nineteen states exceeded their prison capacity in 2010 (Guerino, Harrison & Sabol, 2012).

It is expected that 95 percent of all inmates will be released from prison at some point (Hughes & Wilson, 2020). One analysis by the Bureau of Justice Statistics found that nine years after release, 83 percent of former prisoners had experienced rearrest (Alper, Durose, & Markman, 2018). This cycling in and out of prison has a tremendous impact on the families and communities to which these people return. In 2007, for example, more than half of the prison population in the United States were parents of children under the age of eighteen, with a resultant 2.3 percent of the total population of minor children in the U.S., at that time, having at least one parent incarcerated (Glaze & Maruschak, 2010). Studies show that the incarceration of a parent has long-term impacts on the future outcomes of children. Miller (2006) reported in one study, that 75 percent of children with a parent in prison showed symptoms of “trauma-related stress” (p. 477); when the parent was a mother, the children showed greater signs of stress. This is a troubling fact considering that the number of minor children with a mother in prison grew by 131 percent between 1991 and 2007 (Glaze & Maruschak, 2010). Braman (2004), in his extensive ethnography of the families of prisoners, documented the numerous social, economic and emotional impacts that incarceration has on families. Families also have difficulty maintaining

relationships with incarcerated family members (Naser & Visser, 2006); particularly when prisons are located hundreds of miles away from home communities in rural areas, as is increasingly the case.

### The social impacts of incarceration

Scholars—particularly theorists in the social disorganization tradition of criminology—have collected significant data that show the tremendous impact incarceration has on communities. Crime, incarceration, and the cycling in and out of prison, can have a significant impact on families and communities, leading to the erosion of social capital, a decrease in community capacity, and a breakdown of social order. Academic work on concentrated incarceration and justice mapping also places a particular emphasis on the spatial implications of criminal justice decisions. This line of work has helped inform some of the thinking behind the current justice reinvestment movement.

Crime and incarceration rates tend to be disproportionately concentrated in areas already burdened by poverty, instability, and limited socio-economic opportunities. Eric Cadora of the Justice Mapping Center (one of two scholars who conceived of justice reinvestment in 2003) coined the term “million dollar blocks” to convey how correctional spending in many communities (sometimes over a million dollars a block, per year) far outstrips spending on education, parks and recreation, social services and community development. Rose and Clear hypothesized (1998) that

such concentrated incarceration may actually contribute to increased crime rates.

They explained:

High incarceration rates may contribute to rates of criminal violence by the way they contribute to such social problems as inequality, family life deterioration, economic and political alienation, and social disorganization...The result is a reduction in social cohesion and a lessening of those communities' capacity for self-regulation (p. 467).

Clear, Rose, Waring, and Scully (2003) tested this hypothesis in Florida, and their data suggested that in fact this was the case: an over-reliance on incarceration was linked to an increase in crime rates. Research from other scholars comes to the same conclusion: concentrated incarceration leads to communities that are less stable and less able to maintain social order (Braman, 2004; Western, 2006; Jensen, Gerber, & Mosher, 2004).

A study by Sampson and Loeffler (2010) found that just a few neighborhoods and locations within Chicago contribute to the highest crime and arrest rates. In their analysis of Chicago communities during the years 1990-2006 they found that high rates of incarceration were directly linked to the most socially disadvantaged communities. Most troubling of all, they found that "communities that experienced high disadvantage experienced incarceration *more than three times higher* than communities with a similar crime rate" (p. 27). They explained:

In particular, the combination of poverty, unemployment, family disruption, and racial isolation is bound up with high levels of incarceration even when

adjusting for the rate of crime that a community experiences. These factors suggest a self-reinforcing cycle that keeps some communities trapped in a negative feedback loop (p. 21).

The high rates of incarceration within these communities further destabilizes them and leads to a greater risk of incarceration for residents in the future (p. 29). In conclusion, they suggest that their analysis supports recent interest in “community-level approaches to penal reform” (p. 29).

Several theorists also suggest that mass incarceration has broad implications for all of American society, and impacts not only those touched by the American penal system, but all citizens. Michelle Alexander (2010), for example, noted that the American penal system touches the lives of so many people of color, that large numbers of African-American men and women are as effectively disenfranchised from social and civic life as they were during the time of the Jim Crow laws in the United States. Western (2006) similarly contended that, “the penal system has become so large that it is now an important part of a uniquely American system of social stratification” (p.11). He documented the ways in which the current criminal justice system disproportionately affects the lives of young, low-income, Black men. In 2000, almost a third of all young, Black men who had not completed high school were incarcerated (p. 17). Despite the fact that most of these young men will “age out” of crime (Laub & Sampson, 2003), their experiences with the criminal justice system will likely have lifelong negative impacts in the areas of employment, marriage, and social and civic life.

Simon (2007) suggested that the vast increase in the number of people incarcerated in the United States over the past four decades is due to a “culture of fear” that has permeated our citizenry. The escalation of punitive policies and the political narratives that have surrounded these policies have contributed to the feelings of fear on the part of the average American. Fear of crime has led to policies and strategies designed to protect potential victims from symbolic threats, not only within the criminal justice arena, but in other areas of American life. This culture of fear permeates American homes, schools, workplaces, and even the cars they drive. He suggests that the policies and practices put in place to make citizens feel safe, contribute to decreased freedoms in our homes, schools, and jobs. For example, zero-tolerance school discipline policies, combined with intrusive security measures (school resources officers, mandatory drug testing, metal detectors, etc.) in school districts, restrict the civil liberties and freedoms of American students across all sectors of the population.

Finally, incarceration is costly. State funds diverted to the criminal justice system mean less funding available for other important state-funded institutions and projects such as schools, social services, and parks and recreation. A Pew Center on the States study (2012) effectively argued that incarcerating more individuals for longer periods of time has only a small deterrent effect on crime, while costing taxpayers, nationwide, billions of dollars that may be more effectively utilized through the kinds of approaches supported by advocates of the Justice Reinvestment Initiative (of which, Pew is one).

## Prison expansion – policies

Most academics agree that the increased use of “tough on crime” policies have driven this increase in the prison population. Some trace the origins of this approach to President Reagan’s War on Drugs, motivated in part by the increasing incidence of crack-cocaine use in urban areas (Jensen, Gerber, & Mosher, 2004, p. 100-101), as well as the high-profile death of basketball star Len Bias, after an apparent cocaine overdose (Sterling & Stewart, 2006). Others suggest that these trends began even earlier. Simon (2007) suggested that the *Omnibus Crime Control and Safe Streets Act of 1968* (P.L. 90–351, 82 Stat. 197) signified the beginnings of a wave of policies that would emphasize punishment of offenders, over and above concerns for rehabilitation. Others trace the increased use of incarceration to the anxieties caused by the Civil Rights movement, and note how politicians, via the “Southern strategy,” began to use the language of law and order as substitutes for language about race (Feld, 2003; Tonry, 2009; Western, 2006). Organized interest groups, such as Mothers Against Drunk Driving (MADD), also exerted significant political pressure on policymakers to increase penalties for certain crimes.

Many scholars maintain that “tough on crime” strategies have done little to reduce crime rates, and that their use has only limited deterrence and incapacitation impact (see: Spelman, 2009 or Clear, 2007 for two examples). Policies put in place that led to mass incarceration cannot be tied exclusively to changes in crime rates. Paternoster (2010), for example, found that the number of people incarcerated in the

United States continued to climb during times of falling and rising crime rates. Austin (2011) notes that the imprisonment rate in this country grew by 350 percent between 1968 and 2009, yet the year 2009 had only a three percent increase in the crime rate as that of 1968 (p. 631). Clearly, other concerns, above and beyond the deterrence and incapacitation of criminals, have driven the use of incarceration in this country. What these concerns are, and their influence on policy over the past forty years, continues to be a subject of intense academic debate.

While there have been countless policies put in place over the past four decades that have changed the nature of America's criminal justice system, this review will touch on only a few of the policies that have received the most attention by scholars as having a particular influence on rising incarceration rates in the United States. These include: changes in determinate sentencing (sentencing guidelines, mandatory minimum sentences, and three-strikes-you're-out and other habitual offender laws), changes to probation and parole over the past forty years, and finally, the litany of public policies that have been put in place that have made it difficult for the formerly incarcerated to succeed after prison, or what Jeremy Travis (2005) called "invisible punishments" (p. 64).

### **Truth-in-sentencing, and the changing nature of probation and parole**

Since the early 1990s many states have instituted Truth-in-Sentencing laws. These laws require that inmates serve 85 percent of their prison sentences, greatly



diminishing the use of good time and other early release mechanisms. These laws reduced the influence and use of state parole boards, and in some cases, abolished parole altogether. In some states, these laws only apply to violent offenders, however, in others, they apply to all offenses. Federal grants were provided to states to fund prison construction under the *Violent Crime Control and Law Enforcement Act* of 1994 (H.R. 3355, P.L. 103–322) if states agreed to enact legislation that would ensure that violent offenders served the majority (at least 85 percent) of their mandated sentences. Within four years, more than half of the states had enacted these laws (Spelman, 2009).<sup>4</sup>

As Petersilia discussed in her 2003 book, *When Prisoners Come Home*, the possibility of early release to parole provides incentives for inmates to complete prison programs, including: job readiness, educational, substance abuse treatment and anger management programs. She suggested that these types of programs, if implemented widely, and attended more frequently, could help reduce recidivism rates in offenders. In addition, she noted that parole boards monitor the inmate’s readiness to leave prison, and help inmates prepare for the transition back into the community.

Travis (2005) documented how probation and parole services have changed over time from a social work model to a law-and-order model; whereas in the past

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<sup>4</sup> A report funded by the US Department of Justice contends that federal incentives may not have had a large on states’ decisions to adopt TIS—rather, states seemed committed to increased penalties for violent offenders, with or without additional federal support (Sabol, et al., 2002); although, see Spelman, 2009, for an alternative view.

probation and parole officers played an essential role in assisting offenders as they transitioned back into the community, they are today spending an increased amount of time monitoring ex-offenders' behavior. The changing nature of probation and parole had led to an increased focus on uncovering violations of probation, and returning violators back to prison or jails to serve sentences as punishment for these violations. Travis aptly referred to the broad use of prison revocation for violations of probation as "back-end sentencing."

Our increased reliance on parole revocations as punishment also raises basic questions about our sentencing philosophy. By placing more people under supervision and sending many more parolees back to prison, we have, in essence, created a system of "back-end" sentencing. We deprive hundreds of thousands of citizens their liberty and a minimum of due-process, and imprison them for significant amounts of time, often for minor infractions of administrative rules or for low-level criminal conduct (p. 51).

The proportion of people incarcerated for violations of probations within a state can reach alarming numbers. Perhaps it should not come as a surprise, then, that nearly all of the states that have implemented justice reinvestment strategies over the past decade have targeted violations of probation and parole as a major effort for reform.

## **Determinate Sentencing**

In addition to changes in probation and parole, the past few decades have seen a tremendous change to sentencing policy and practice. In particular, determinate sentencing, which creates guidelines for judges when determining sentence length, has in many cases replaced indeterminate sentencing, which allows for judicial discretion in sentencing decisions. In some cases, prosecutors may have greater discretion to determine a person's fate after arrest than a sentencing judge. Ironically, the call for greater limits on judicial discretion was first put forth by liberal groups such as the American Friends Service Committee during the 1970s, in an attempt to limit racial bias in judicial decisions, and due to the concerns that rehabilitation programs in prison were doing little to assist prisoners.

Sentencing guidelines provide certain benchmarks that judges must follow when sentencing offenders. In some cases, judges can depart from these guidelines, but they must provide explanations for their departure. Mandatory minimum sentences, on the other hand, impose strict uniform sentences to all offenders convicted of certain crimes, regardless of any extenuating circumstances. Notorious among these was the Rockefeller drug laws, passed by Governor Rockefeller in New York during the early 1970s. These laws mandated sentence lengths for drug crimes that in many cases far exceeded those of violent crimes. During the 1980s "War on Drugs" such sentences became increasingly popular among states and the federal government. In 1986, with the passage of the Anti-Drug Abuse Act of 1986, the first

of the federal mandatory minimum drug sentencing laws were enacted; more were to follow over the next few decades. The 2010 *Fair Sentencing Act* (P.L. 111–220) overturned a 25-year federal mandatory minimum drug law that had a 100 to 1 disparity between crack-cocaine and pure cocaine and the weight limits that triggered mandatory sentences. Many scholars and advocates over the past two decades suggest that the original law had a disproportionate impact on African-American communities, which were far more likely to use crack-cocaine (and thus trigger the much higher mandatory sentence) than white communities, where use of cocaine is more common (Abrams, 2010).

The use of habitual offender laws has also expanded over the past few decades. Noted among these is the “three strikes” laws that originated in Washington and California that assigns a life sentence to a person convicted of their third felony crime. Within two years of California’s passage of the law, 24 states had enacted similar legislation (Nicholson-Crotty, 2009), and it has since become widespread practice among the states. Other habitual offender laws exist which target specific crimes such as sexual assault, child molestation, and drug sales.

### **Prisoner reentry and “Invisible punishments”**

The “get tough” movement extends beyond those under the supervision of the correctional system. While changes in sentencing policy and probation and parole likely explain a large proportion of the increased prison population over the past

decades, policies were also made outside of the criminal justice system that have had far-reaching implications for the hundreds of thousands of people with criminal records that have served their debts to society, yet face significant barriers to full employment and citizenship in this country. These “invisible punishments” (Travis, 2005, p. 64) can have the effect of providing a lifetime of punishment for the formerly incarcerated, and has implications for the long-term success of not only ex-offenders but their families and communities as well.

Just a short list of the types of policies that have been enacted across the United States gives a sense of the size and scope of the problem. For instance, a person convicted of a felony drug offense may be faced with the following policy barriers (sometimes known as “disabilities of a conviction”): a loss of voting rights, and the ability to serve on a jury; eviction from public housing; inclusion on a criminal registry; have his or her drivers’ license revoked; lose the ability to receive TANF and food stamps; be ineligible for federal student loans; have his or her parental rights terminated; be prohibited from certain occupations (e.g., work in a pharmacy or hospital, certain construction work); and, finally, if the person is a legal immigrant, they could also be deported for their crime, after serving their sentence. Certain offenders, such as sex-offenders, may have even greater than usual housing limitations because they are prohibited from living near particular locations such as parks, schools and libraries. In urban areas, it can be nearly impossible to find *any* housing that is within the allowed range, let alone affordable housing with a landlord that is open to accepting a person with a prior criminal record. Given this broad list of “invisible

punishments” (which is by no means exhaustive), it is not surprising that many ex-offenders have an extremely difficult time succeeding after prison.

In addition to the state-mandated barriers noted above, the reentry process is also hindered by a range of complications, from the personal to the social. A recent Bureau of Justice Statistics report found that the majority of prison and jail inmates meet the criteria for substance use dependence (Bronson, Stroop, Zimmer, & Berzofsky, 2017). Former prisoners with opioid dependency have a high risk of mortality due to drug overdose after release from prison (Binswanger, et al., 2007; Ranapurwala, 2018). Many prisoners also have mental health disorders. One study of five jails in two states found prevalence rates for serious mental illness in jail populations of 14.5 percent for male inmates and 31 percent of female inmates (Steadman, Osher, Robbins, Case, & Samuels, 2017). Without adequate streamlining of behavioral health treatment and medical care from the prison and into the community, ex-offenders may quickly fall back into negative behaviors. In addition, these people may have a range of personal problems that hinder effective reentry, including: low educational attainment; poor interpersonal relationships; few marketable job skills, and a poor employment history. Many employers are hesitant to hire those with a prior criminal record, while many landlords are disinclined to house these same people. Without secure housing, gainful employment is hard to locate; and without income from employment, housing is difficult to secure.

Too often these men and women return to communities that are deeply disorganized: poverty is high, crime is prevalent, schools, parks and other community

cornerstones are overwhelmed and underfunded, and jobs are scarce. These are often the same communities that fostered their criminal behavior to begin with—the same temptations, friends, and networks. Facing a host of personal, social and policy barriers that hinder ease of reentry, many return to crime.

Yet, even without committing a new crime, they may find themselves back in prison. Missing an appointment with a probation officer can lead to revocation of probation, and a short stint in prison. Substance abuse is punished with re-incarceration. Missing a day of work may be considered a probation violation. Any hard work done to find a job, locate housing, and reconnect with families, can be quickly dismantled by relatively minor mistakes of judgment. A former prisoner may only be re-incarcerated for a few days as a result of a violation of probation, but it is enough to turn his or her world upside down, let alone any family members who may be emotionally tangled up in this person's lives.

### **Recent wave of criminal justice reforms**

Concurrent with the reform efforts at the state level through the Justice Reinvestment Initiative, and by way of other locally-driven reform efforts, reform legislation was also passed at the federal level. With the passage of the federal *Second Chance Act* of 2007 (P.L. 110-199), the *Fair Sentencing Act* of 2010 (P.L. 111-220), and the *First Step Act* of 2019 (P.L. 115-391), long envisioned criminal justice reforms came to fruition. The first bill provided extensive funding for programs and

services that support the successful reintegration of former inmates back into society after release. The second bill reduced the wide sentencing disparity between crack-cocaine and powder cocaine that had a disproportionate impact on people of color. The third piece of legislation, among other provisions, makes retroactive the *Fair Sentencing Act*. In addition, the bill improves conditions of confinement for female inmates, creates some early release mechanisms, provides more judicial discretion in non-violent drug offenses, reduces some mandatory minimum drug sentencing laws, provides funding and oversight for risk and needs assessments within federal prisons, and outlines limited correctional reforms. Despite representing a change in direction from the past decades of increasing punitive legislation, these reforms may, depending on perspective, consist of primarily modest and incremental reforms, as they target what Gottschalk (2015) calls the “nonserious, nonviolent, and nonsexual offenders – the so-called non, non, nons” (p. 116), and do not change policy to the degree in which system-wide reductions in the American penal system can occur.

### **Broader social, economic and political trends linked to increased incarceration**

Scholars have provided numerous explanations for the United States’ uniquely punitive approach to law and order. Some have taken an historical view and traced the expansion of the prison system to the end of the New Deal rehabilitative ideas, that were replaced with more punitive approaches to crime in the late 1960s and early 1970s as politicians used crime and order as a valence issue to appeal to voters who



were anxious and uncertain about societal changes that had occurred during the Civil Rights Era (Simon, 2007; Western, 2006).

Others have examined broader social, cultural and political themes to better understand the use of incarceration in the United States. Tonry (2009) suggested that the high rates of incarceration in the United States can be attributed to four factors. The first, he attributed to political paranoia, which has been a feature of U.S. policymaking from early in the country's history. He explained: "What is deeply disapproved is seen as evil or immoral and few means are off limits in pursuit of its eradication" (p. 381). Policymakers, in an attempt to garner votes, generate political paranoia about crime and public safety. The second factor, related to the first, is that the United States has a unique history of religious fundamentalism. Members of fundamental denominations see criminal behavior as clearly immoral behavior, and see tough sanctions as appropriate responses to such behavior. In this view, there is little ambiguity. The third factor he attributed to the U.S. Constitution with its emphasis on state rights and the separation of powers. In particular, he noted that the U.S. is one of very few nations where judges, sheriffs or prosecutors are elected. Elections of these officials, as well as policymakers, may influence candidates towards emotional and/or rhetorical grandstanding on the subject of crime. Finally, he suggested that the United States' legacy of racism and racist social policy have had an impact on our incarceration rates, and contribute to the disproportionate number of African-Americans in prison.

Where does the greatest impact lie—locally, statewide, or federally?

An additional question that is open for debate is to what extent the current expansion of the criminal justice system can be tied to federal policies and actions, and which can be attributed to state and local policymaking. The role of the other branches of government—executive and judicial—should also be considered. For example, the “War on Drugs” is generally attributed to leadership from President Ronald Reagan, and the drop in crime in New York City during Rudy Giuliani’s tenure as mayor has been attributed (although some say falsely) to his support of “broken windows” policing (see Harcourt & Ludwig, 2005, for an example of one review and analysis of this policing tactic). At the judicial level, court rulings on such issues as capital punishment, prison capacity, and conditions of confinement have also had an effect on the prison population of the United States. For example, a recent federal court order required the state of California to reduce the prison population by nearly 30,000 inmates. The U.S. Supreme Court upheld the order with the explanation that current prison conditions violate the 8<sup>th</sup> Amendment of the Constitution and its prohibition on “cruel and unusual punishments.” California responded by implementing a series of “justice reintegration” strategies, similar in design to justice reinvestment strategies (Liptak, 2011). Additionally, decisions made by police officers, prosecutors and agency administrators may also contribute to the punitive culture of America. A notorious example is former sheriff of Maricopa County, Arizona, Joe Arapaio, who repeatedly made national headlines for some of his decisions: making inmates wear

pink underwear, reinstituting the chain gang, and requiring inmates to reside in unconditioned “Tent Cities” where the temperature can exceed 100 degrees—to name just a few.

Lynch (2011) made the argument that despite extensive attention to the problems of “mass incarceration” in the United States, much of the literature neglects that changes in the prison population over the past decades are driven by complex processes, which are often simplified in the literature as changes to sentencing law. Rather, she suggested that criminal justice decisions are made at multiple levels of government, from legislation and case law, to increased prosecutorial discretion and the individual actions of local-level bureaucrats. She noted that scholars have attempted to tease out the causes of increased incarceration by observing national processes. She suggested that this perspective ignores that the bulk of criminal justice decision-making occurs at the local level, and suggests that reform efforts may be better targeted at the local level than the federal or even state level. Along this same idea, she asked a question that is consistent with much of the thinking behind justice reinvestment: “Does a large part of the *capacity* for mass incarceration lie in the unique American structure that provides local criminal justice actors with the power to incarcerate but no responsibility to pay for it” (p. 681). Lynch (2011) also noted that criminal justice policies often have significant regional and local attributes; that is, different localities implement policies in different ways, and local events (such as a high-profile crime) can change the direction of policy. Finally, she noted that certain

regions of the country also share common trends, such as support for capital punishment, or the use of super maximum security (“supermax”) prisons.

Barker (2006) similarly suggested that scholars seeking a greater understanding of increased imprisonment rates in the United States should look closely at state level characteristics. During the 1970s and through the 1990s all American states experienced climbing crime rates, yet state responses to crime varied significantly across the country. Barker suggested that variation in imprisonment rates among the American states may be attributed to differences in democratic processes within states, particularly the rate of civic involvement in public life and the centralization of the state government. She selected three states for her case study—California, New York and Washington—based on prior literature from political science that suggests that each of these states have unique governing features that sets them apart from each other, primarily differing rates of social capital and civic engagement and variations in the centralization of power, and found evidence to suggest that differences in state governance did, indeed, have an impact on state incarceration rates.

Campbell and Schoenfeld (2013) argued that an understanding of the uniquely American penal order requires an understanding of both federal and state policymaking across three different periods of time. During each of these periods, presidential campaigns, social unrest, and media reports at the national level created a narrative and a focus to the problems of crime and order, with federal legislation passed as a result. States responded according, with state-level policy decisions highly

influenced by state-level characteristics and context. Federal funding to states created waves of policy making at the state level, much of which went to increasing the capacity and breadth of the correctional system, which in turn led to empowered and established interest groups who were invested in the new penal order. These policy innovations, and the systems that they created, influenced policymaking in later periods. Federal courts also played a role as civil rights lawyers increasingly litigated cases related to conditions of confinement, which required states to create policies to reduce prison populations – often by building more prisons. During these periods of changing penal culture, state and federal policymaking informed each other in a “dynamic interaction of national and state processes” (p. 1388). Therefore, attempts to understand the current criminal justice system by examining only state or federal level responses are likely to underrepresent that dynamic.

### **Justice Reinvestment**

Instead of a single policy, justice reinvestment is an approach to creating reforms to the criminal justice system, which may result in several changes in policy. As such, it can be interpreted and implemented broadly, to the point where it “risks becoming all things to all people” (Austin, et al., 2013). The first part of this section provides a brief history and overview of the justice reinvestment movement. This includes information about the organizations that are involved with justice reinvestment, and why their involvement is important. Justice reinvestment is linked to

broader political, social and academic trends that are occurring in this country, and a summary of some of these themes are outlined here. This section concludes with a review of the limited evaluation research related to justice reinvestment, as well as the critiques and recommendations for change that have been offered by criminologists and other key stakeholders.

### What is Justice Reinvestment?

Justice reinvestment was first conceptualized by Susan Tucker and Eric Cadora in a monograph published by the Open Society Institute in 2003. Drawing from Cadora's work with the Justice Mapping Center, where he coined the term "million dollar blocks" to highlight the steep costs of concentrated incarceration, the authors pinpoint the exorbitant amount of money that is being channeled into prison policies that are often ineffective in reducing recidivism and increasing public safety. Noting that much of the nation's crime problems are drawn from certain problematic areas, they suggested "community level solutions to community level problems" (p.2). Stressed within this article is the idea that incarceration alone cannot guarantee public safety. Indeed, there is evidence to suggest that increased incarceration makes communities more unstable and less safe (see: Rose & Clear, 1998; Clear, 2007). Rather, public safety is a community level problem, where community corrections, social services, and the building of community capacity will have an effect on decreasing crime. This requires devolution of responsibility for crime to the local

level, and the financial incentives to ensure success. Any funds saved by downsizing prisons should be reinvested back to local communities to support these programs. Justice reinvestment, then, is not a single policy, but rather a process or approach whereby policy options can be put forth, based on local or state-level conditions, to improve the efficiency of the criminal justice system.

Tucker and Cadora (2003) highlighted the value of community service, even going as far to support the creation of a civic justice corps that would employ returning prisoners in community-based projects that would increase community capacity. They drew inspiration from a project conducted in Deschutes County, Oregon, that required juvenile offenders to work in supervised community service programs rather than stay in juvenile detention facilities. The program was so successful that the county eventually expanded to include adults who had committed low-level offenses. The results demonstrated less recidivism for those involved in the project, while also providing essential skill building to offenders, as they worked to improve their own local communities.

Within a year of this publication, Connecticut, with the assistance of the Council of State Governments, was the first state to consider a statewide justice reinvestment strategy. Connecticut's initial data collection relied heavily on justice mapping techniques, which use Geographical Information Systems (GIS), to determine high crime and high prisoner reentry areas, as well the location of necessary social services such as drug abuse and mental health treatment, among others. The Connecticut workgroup found that the vast majority of justice dollars in Connecticut

were being used in just three cities, and within these cities, just a few neighborhoods and blocks. They also found that a large number of people in prison were incarcerated for relatively minor violations of probation or parole, and served sentences far past the date of parole eligibility. Together, these findings suggested that to effectively reduce prison populations, policymakers should target solutions locally, with a focus on probation and parole. In 2004, the *Act Concerning Prison Overcrowding* was passed that mandated increased supervision of probationers and parolees, better prisoner reentry support, and reductions in revocations to prison for violations of probation. According to the Council of State Governments Justice Center (2014), approximately \$14 million was reinvested into additional programs, many of which expanded substance abuse and mental health treatment. As a result of the bill, inmates housed out of state were returned to Connecticut.

In 2006, the Council of State Governments, the Pew Public Safety Performance Project and the Bureau of Justice Assistance, provided resources and technical assistance to Texas, a state that was on the brink of costly prison construction, which was estimated to cost the state approximately a half a billion dollars (Fabelo, 2010). A bipartisan working group was organized to analyze state-level data and make policy recommendations based on those findings. The working group found that a large number of people in prison were there because of prison revocation after a violation of probation. In addition, there was not enough substance abuse or mental health treatment programs both inside and outside of jail. Those prisoners who had to either complete treatment programs in prison or be released to a

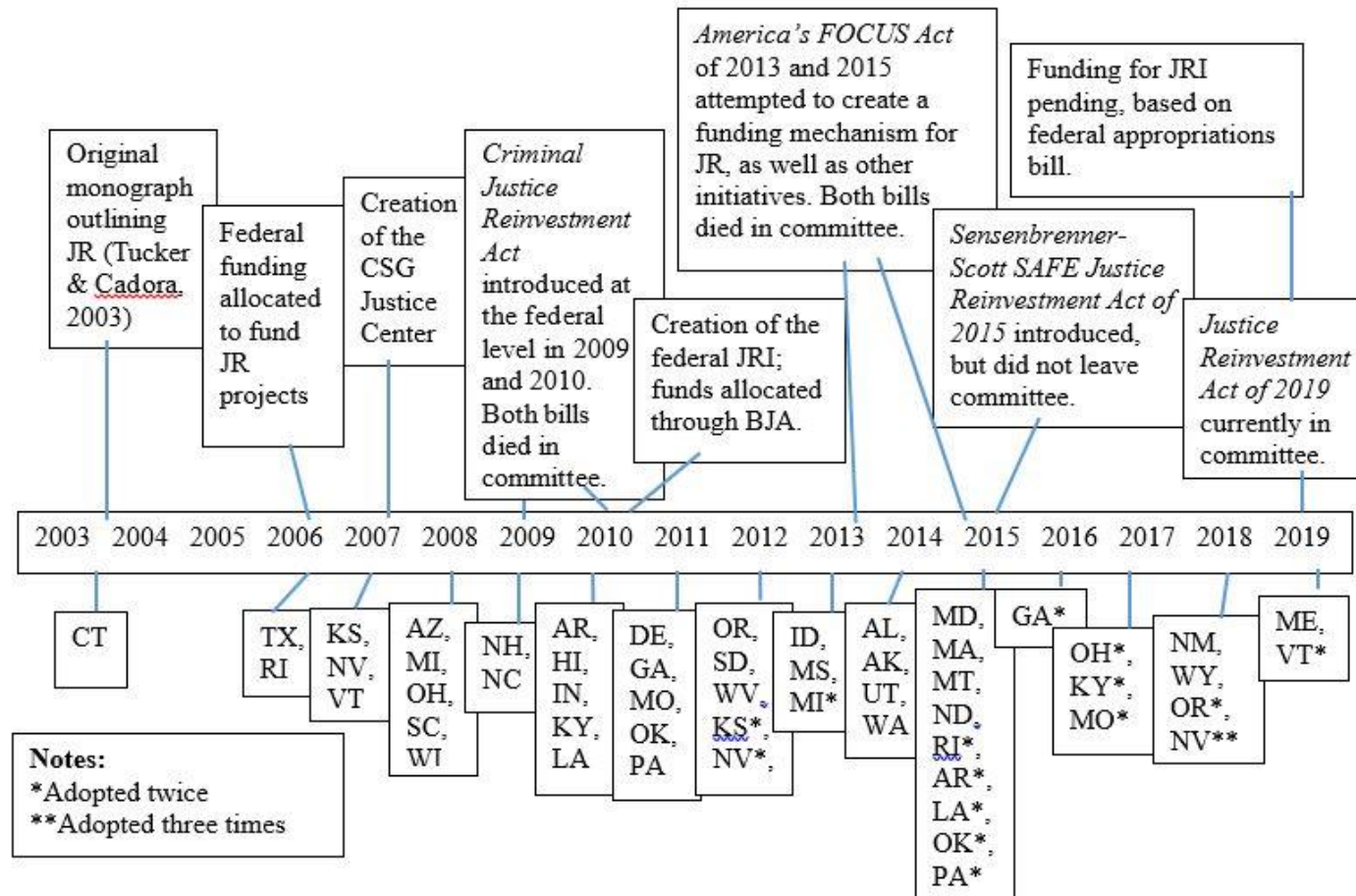


treatment program within the community remained in prison due to lack of treatment options. They also found that in 2005, over 2500 inmates who were eligible for release through parole remained in prison past their date of parole eligibility. In 2007, the legislature passed a budget that greatly expanded treatment program within prisons, within communities, and through probation and parole departments. Legislation was also passed that: modified probation sentences for low-risk probationers; established drug courts and other problem-solving courts for offenders with treatment needs; set maximum caseloads for parole officers; and, provided grants to counties to implement programs and policies that would reduce revocations to prison for violations of probation (Fabelo, 2010). According to the Council of State Governments (2009), these policy changes saved the state an estimated \$443.9 million between 2008-2009. \$241 million of those savings were reinvested back into treatment programs both within prisons and in the community, as well as other community-based diversion programs (Fabelo, 2010).

Federal funding for the Justice Reinvestment Initiative to states and localities is provided by the Bureau of Justice Assistance. The first allocation of federal funds for the program was in 2006, but it was not until 2010 that the Justice Reinvestment Initiative was formalized through federal appropriations bills. From 2006 to 2010, eleven states implemented justice reinvestment approaches with technical assistance provided by one of the partnering nonprofit organizations, and funding provided through the Bureau of Justice Assistance. After the initial inclusion of funding for the Justice Reinvestment Initiative within federal appropriations bills, Congress continued

to allocate money for the Justice Reinvestment Initiative from year to year. Most recently, the Justice Reinvestment Initiative was funded at \$25 million for each year between 2017-2019. The current funding status is pending passage of the *FY2020 Commerce, Justice, Science Appropriations Bill* (U.S. Department of Justice, n.d.). President Trump's FY 2020 budget discontinued funding for the Justice Reinvestment Initiative, however, the appropriations bill sets aside \$28 million for the program in fiscal year 2020. As of winter 2020 there have been six efforts to fund justice reinvestment through federal legislation; all of these introduced bills did not make it out of committee for a full vote. Figure 2 provides a timeline of the national movement towards the formalization and funding of justice reinvestment, as well as state adoption.

Figure 2. Timeline of events of state and federal policy actions related to justice reinvestment



In just over a decade and a half, justice reinvestment has caught the attention of policymakers, not only across the United States, but internationally as well, with justice reinvestment projects also under consideration in the United Kingdom and Australia. Currently, 42 states have adopted justice reinvestment as a policy approach; of these, all but two of the states have been involved with the national Justice Reinvestment Initiative, a partnership between several national nonprofit organizations and the federal Bureau of Justice Assistance<sup>5</sup>. Thirteen of those states have gone through the Justice Reinvestment Initiative process twice, and Nevada has requested assistance from the Justice Reinvestment Initiative three times (for a full list of states and the reasons why they adopted see Appendix 1). Additionally, many local jurisdictions have used the justice reinvestment approach, and have done so with the technical and funding assistance of Justice Reinvestment Initiative partners.

As conceived by groups such as the Council of State Governments Justice Center, the Bureau of Justice Assistance, and others, justice reinvestment is anchored on the promise of building off of “what works” and evidenced-based programs. The Justice Reinvestment Initiative provides a platform for state and local policymakers to reconsider the financing and operation of correctional systems. Justice reinvestment is a multi-step process. To begin, commissions of state policymakers, agency heads, and organizational leaders meet to review data on state and local correctional systems.

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<sup>5</sup> See footnote 1 about the differences in the numbers of states that have participated cited by Austin et al. (2013) and LaVigne et al. (2013).

Inefficiencies, and areas for improvement, are identified. Where the use of incarceration can be safely downsized, targeted strategies are constructed to do so. Any savings realized by reducing the prison population in that state, or by averting future costly prison expansion or construction, is to be reinvested back into the community, with an end goal of building community capacity, strengthening community corrections, and improving social services that will improve the life chances of those people at risk of incarceration.

Fox, Albertson and Wong (2013) suggested that there are three primary characteristics of justice reinvestment: the use of economic models and theories, the focus on data and evidence to guide decisions, and an emphasis on efficiency (p 29). While they noted that the term was coined by Tucker and Cadora in 2003, they believe that prior work by the Washington State Institute for Public Policy had a large influence on the justice reinvestment movement. This work involved meta-analysis of existing programs, Cost Benefit Analysis and risk analysis of programs that had the potential to be used in the state, and finally, recommendations based on this analysis to the state legislature (pp. 30-31).

Justice reinvestment is an emerging process. There is limited evaluation of its merits, and what is available is often an estimated cost-savings based on projected prison population counts if the state had continued with the status quo. A 2014 report published by the Urban Institute and the BJA suggested that the Justice Reinvestment Initiative projects implemented in seventeen states were, at that time, projected to collectively save state governments \$4.6 billion (LaVigne et al., 2014). A more recent

report from the Urban Institute estimated that as of fiscal year 2017, Justice Reinvestment Initiative states have reinvested \$557 million saved through the Justice Reinvestment Initiative into a number of state and community programs that support public safety (Welsh-Loveman & Harvell, 2018).

In general, it seems that most of the evidence in support of justice reinvestment comes from specific programs that have been implemented in various states (even those that have not yet implemented justice reinvestment as a statewide strategy) that have undergone evaluation and have been found to be successful (for examples, see: Sherman, et al., 1998 and Drake and Miller, 2009).<sup>6</sup> Programs that exemplify “best practices” in one location are adopted in other locations; prison projections are then based on prior success of programs.

Beyond cost-savings and associated reinvestment, the Urban Institute identifies other measures of Justice Reinvestment Initiative’s impact, including: declines in prison populations in several of the states that participated, and stabilization of prison

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<sup>6</sup> For example, Hawaii only petitioned for federal support and technical assistance for justice reinvestment in 2010, and was still in the data collection phase, when Hawaii’s Opportunity Probation with Enforcement program (HOPE) was touted in the justice reinvestment literature as a model for probation reform that other states should consider implementing. HOPE was evaluated by independent researchers using methods that included a random, control group, and probationers involved were significantly more successful, in terms of decreased drug use and revocation to prison, than probationers who were not enrolled in the program (Hawken & Kleiman, 2009). The results were so successful that the BJA offered grants to four states to implement the same program so that its merits could be evaluated, and attempted federal legislation was initiated to fund HOPE nationally through the *Honest Opportunity Probation with Enforcement (HOPE) Initiative Act* of 2009, which died in committee.

populations in other states that had anticipated growth; the adoption of evidence-based programs, policies and programs within criminal justice organizations; improved data collection and reporting; and, creating a culture that is more open and responsive to collaboration and data sharing and amenable to considering criminal justice reforms in the future (LaVigne, et al., 2014).

### Who is involved?

In the past few years, justice reinvestment has generated substantial interest by policymakers across the political spectrum, and has been supported by organizations as diverse as the Open Society Institute, the Urban Institute, Prison Fellowship Ministries, the American Civil Liberties Union, NAACP, and Right on Crime (an organization that includes conservative politicians such as Jeb Bush and Newt Gingrich). Organizations that have been and/or are currently involved with the Justice Reinvestment Initiative include: The Council of State Governments Justice Center, the Urban Institute, the Pew Center on the States, Vera Institute of Justice, the Center for Effective Public Policy, the JFA Institute, and the Crime and Justice Institute (Bureau of Justice Assistance, n.d.). These organizations provide technical assistance and information to states. In addition, the following organizations have been involved in the national Justice Reinvestment Initiative movement by providing additional funding to states: Public Welfare Foundation, Pew Charitable Trusts, JEHT Foundation and the Open Society Institute. Many of these organizations have been involved in a

continuous dialogue about the need for criminal justice reform long before the justice reinvestment strategy came into being.

These technical assistance and funding organizations also play a key role diffusing information to policymakers and advocating for Justice Reinvestment Initiative during the agenda setting stage of the policy process. Percival (2012) provided an analysis of some of the reasons why Texas, a state that has historically led the nation in punitive policies, came to embrace “smart on crime” policy approaches during the 2000s.<sup>7</sup> He utilized theories drawn from the agenda-setting literature to examine why and how attention shifted from punitive law and order policies to rehabilitative policies over an eighteen year time frame. He suggested that the smart on crime framework was effective in changing the views of policymakers because of its attention to questions of effectiveness, efficiency and morality, which alone could not sway the focus of policymakers in previous decades, but taken together provided a powerful incentive for change. Using content analysis of two major newspapers within the state, he found that coverage in the 1990s was generally “tough on crime” while by the 2000s there was a significant increase in the number of articles that demonstrated support for the “smart on crime” position—for example, they documented the failures

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<sup>7</sup> It is interesting that while Percival was certainly talking about the policy changes that Texas implemented as part of an overall justice reinvestment strategy, he only uses the term once in his paper, preferring instead to refer to the broader movement as a “smart on crime” movement.



of the current prison system or provided positive views of rehabilitative programs that have been successfully implemented in other areas.

Percival credited four trends that helped change the tone around penal policy: the size of the prison population, state budget declines, a growing coalition of advocacy groups, and emerging criminal justice policy research (p. 21). Together these trends contributed to a “window of opportunity” (Kingdon, 1984) that provided a chance for different conceptualizations of crime and justice to be considered than in past decades. Using Kingdon’s multiple streams framework to guide his thinking, Percival asserts that it was the convergence of these different trends that made reform possible, and that each alone would not have raised the attention of policymakers. While the expansion of the prison population and state budget deficits were problems that contributed to the decision to adopt justice reinvestment approaches, these problems had also occurred at prior points and time, without any change in penal policy. It was only through the work of advocates and researchers that crime policy was reframed in a way that was amenable to policymakers. He gave particular attention to the work of the Council of State Governments and to Prison Fellowship Ministries. In the first case, the Council of State Governments provided essential information to policymakers, as well as providing technical assistance through data-collection and research. In the second, conservative and evangelical policymakers, such as then Governor Rick Perry, were swayed by the messages of this group. In addition, he also credited the “what works” movement within criminology as providing essential research and data about effective programming, giving

policymakers some room to maneuver when charged as being “soft on crime.” The advocacy organizations, in turn, “play a crucial role in bridging the gap between theory and practice by diffusing expert-based practices within and across a variety of states considering reform” (p. 33).

The federal government has also played a key role in the diffusion of information about justice reinvestment, as well as advocating strongly for its adoption; for example, former Attorney General Eric Holder voiced strong support for the Justice Reinvestment Initiative during the National Summit on Justice Reinvestment and Public Safety in 2010 (Clement, Schwarzfeld, & Thompson, 2011). LaVigne, et al. (2014) credited this summit as providing an important platform for states to learn about Justice Reinvestment Initiative, and at least one state (Oklahoma) adopted Justice Reinvestment Initiative as a direct result of attending the summit. The Bureau of Justice Assistance also partners with the above mentioned organizations to provide technical support, information, and expertise to states interested in the Justice Reinvestment Initiative process. In addition, funds, while limited, are available from the Bureau of Justice Assistance to states that implement the Justice Reinvestment Initiative. One Bureau of Justice Assistance official reported that in 2011 thirty jurisdictions had petitioned the Bureau of Justice Assistance for assistance in the data collection phase of Justice Reinvestment Initiative (Burch, 2011). This suggests that at that time, states and localities that had not yet implemented justice reinvestment approaches may have had a desire to do so, but were waiting until they were awarded federal funds.

## **Justice Reinvestment in context: the social, political and academic roots of the justice reinvestment movement**

While the term justice reinvestment may have been coined in 2003, its roots can be traced to a few larger trends: new federalism and the devolution of social services to state and local levels; the “what works” or evidenced-based policy movement currently in vogue across multiple policy and academic arenas; liberal and conservative approaches to crime control and public safety; and, prior criminal justice policies and initiatives of the past decade that may have paved the way for justice reinvestment approaches.

### **New Federalism**

The first of these broader trends is the idea of “New Federalism” which was particularly salient in academic and policy circles in the 1990s. The influence of this political philosophy can be seen in a number of federal laws that have since passed that devolved responsibility for federal programs to state and/or local governments. The most obvious example of these policies may be the *Personal Responsibility and Work Opportunity Reconciliation Act* of 1996 (P.L. 104-193), which reformed the U.S. welfare system. This act devolved the responsibility for the management and operation of the federal cash assistance program to the state level through the use of block grants. These block grants under the Temporary Assistance to Needy Families program had fewer restrictions on how to allocate money or run programs than that of the federal Aid to Families with Dependent Children program that was disbanded

under welfare reform—states just had to ensure that the essential components of the program were implemented. This shift gave states increased flexibility in how they allocated welfare payments to individuals and families, including decisions about eligibility.<sup>8</sup>

The idea behind devolution is that state governments are closer to the source of social problems and are therefore more likely to develop strategies that are effectively crafted to solve the problems that are addressed by the policy or program. Further devolution to counties and cities follows the same logic. Advocates for the devolution of governmental programs and services to local governments often also support the provision of governmental contracts to private companies, with a stated belief that private companies are more inclined, and better suited to, greater efficiency and cost-savings. Federal programs, then, can be devolved from the state level, to the local level, and even to nonprofit or for-profit organizations through state funding mechanisms, such as grant-in-aid programs (see: Watson & Gold, 1997, for one study of local level devolution). Devolution is not without its critics, and a wide literature exists on the merits and problems of devolution and the use of block grants, which is outside the scope of this project.

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<sup>8</sup> This change, among others, to the U.S. cash assistance program, has both its admirers and its critics; see Parrot & Sherman (2007) and Mead (2007) for two opposing viewpoints.

## **The “what works” and “smart on crime” movements**

Across several fields—notably, health care, education, social work and criminal justice—there has been widespread interest in effective program evaluation and the implementation of programs based on “what works.” For example, the U.S. Department of Education’s Institute of Education Sciences maintains the *What Works Clearinghouse*, which provides information on evaluations of educational programs across the United States. In the criminal justice field, the National Institute of Justice provides information about program evaluations on its [crimesolutions.gov](http://crimesolutions.gov) webpage. Within the justice reinvestment literature, “evidenced-based practices” and “what works” are re-occurring phrases. As in the case of devolution of social services to local governments, the “what works” movement has strong support, as well as criticism.

The evidence-based movement in criminology was also aided by the work of organizations outside of the academic community. Young (2011) explained that much of the evidenced-based movement can be traced to systematic reviews of medical research. The Cochrane Collaboration, which traces its history of medical evaluation to the early 1970s, currently houses a library of systematic reviews of evidenced-based medicine. Its sister organization, the Campbell Collaboration, now offers systematic reviews across many disciplines, including criminal justice.

Cullen and Gendreau (2001) provided an interesting historical perspective about why the criminological field has embraced the “what works” movement. They

explained that in the beginning of the twentieth century, until the 1960s, there was a widespread, professional understanding that criminal problems could be understood through scientific inquiry, and that effective programs could be implemented to counter criminal behavior. Rehabilitative programs were encouraged over and above simple punitive solutions to crime. They explained: “Program failures were not a reason to reconsider the whole enterprise but occasions to point out how treatment might be done better—that is, more scientifically” (p. 320). However, the publication of Robert Martison’s 1974 article, “What Works? Questions and Answers about Prison Reform,” took the criminological community by storm. This article summarized the results of an analysis of 231 program evaluations conducted by Martison and colleagues with the dreary conclusion that of the multiple programs geared towards rehabilitating criminal offenders, “nothing works” (p. 48; cited in Cullen & Gendreau, 2001, p. 321).

Despite the seeming inconsistency of more than a half century of professional ideology, the “nothing works” perspective began to dominate criminological study, policy and practice. Cullen and Gendreau suggested that despite methodological and analytical weaknesses in the Martison study, the criminological field embraced the study because it supported emerging doubts within the field about the current correctional system. Multiple scholars had already begun to examine contemporary criminal justice and public policy, and to provide more critical perspectives on its working. They noted: “Previously, the expansion of government intervention into the lives of the poor and deviant had been portrayed as benevolent paternalism—as well-

intended efforts to address problems in people's lives. But the events of the day fostered the view that the state wielded its power not benevolently but abusively" (p. 323). As a result of these changes, the authors suggested, the criminological field has been "dominated by a professional ideology for the past quarter century that is committed to 'knowledge destruction' rather than 'knowledge construction'" (p. 314); that is, identifying what doesn't work in contemporary correctional practice, rather than what does, with a broad ideological view that correctional systems are excessive, ineffective and repressive.

Yet, as interest in supporting and building effective rehabilitative programs waned, so did these programs, and in the following decades, policymakers crafted criminal justice policies with increasingly punitive approaches to crime over rehabilitative approaches. This trend, converging with others, as noted in the previous section of the literature review, led to a widespread expansion of the prison system. Cullen and Gendreau argued that while criminologists rose to the challenge presented by this transformation of the prison system by documenting why the system did not work, they again followed conventional professional ideology by focusing their attention on the aspects of the correctional system that do *not* work, rather than those that do. Instead of criminologists leading the charge to identify effective practices, it was primarily scholars outside of the field of criminology, such as psychologists, that began to sway thinking about contemporary correctional practices. They argued that it was only at the turn of the century—as evidence mounted that there are many

rehabilitative programs that actually do result in less recidivism—that criminologists have begun to take note.

Fox, Albertson and Wong (2013) provided some insight into the recent evidenced-based movement in criminology, and how it relates to the justice reinvestment movement. They offered some cautions about the over-emphasis on program evaluation within the “what works” movement, including: the expense and limitations of experimental criminology, the generalizability of programs across multiple contexts, and the political reality of whether those involved in justice reinvestment decisions will take that evidence into consideration. For example, they cited the fact that several systematic reviews of the Scared Straight and Drug Abuse Resistance Education (DARE) programs have failed to find evidence for their continued support, yet the programs continue to be implemented.

Similarly, Todd Clear, an initial supporter of justice reinvestment, offered, in his 2009 Presidential address to the American Society of Criminology, some optimistic perspectives on the move towards evidenced-based practices, as well as some words of caution. He traced the trend towards increasing interest in program evaluation and effective programs as due to a convergence of several trends: at that time, a new presidential administration more hospitable to scientific evidence, a greater number of professionals and practitioners within corrections that have advanced degrees, and a renewed interest in policy-relevant work within the criminological community. Despite noting that he is “an enthusiastic observer of this new paradigm of effectiveness” (p. 4), Clear offered some concerns. Chief among



these is that the so-called “gold standard” of randomized control studies is hard to come by: the studies that do exist are generally quasi-experimental in nature, and embedded within specific contexts that limit generalizability. Yet, the current insistence on following pre-existing “proven” programs leads to an additional problem: “To the extent that it relies on the existence of a collection of effectiveness studies pertaining to the intervention at hand, it is a backward-looking standard that requires both a history of action and a systemic pattern of proof of the wisdom of the action” (p. 6). This focus on the past limits innovative program design and conceptualization in the present. Clear suggested that while analyzing effective program evaluations is essential, other forms of analyses are needed such as, “policy studies, qualitative work, natural experiments, and problem analysis” (p. 7), and the field of criminology can play a prominent role in their creation. He also noted that touting evidenced-based programs may be limiting, if there is very little understanding of program implementation, funding and sustainability.

In the field of criminal justice, the evidenced-based movement was also encouraged by many of the organizations that are currently involved with the Justice Reinvestment Initiative. These organizations, which have policy change as an explicit focus of their work, may have been better situated than researchers at academic institutions to bring their concerns about mass incarceration to the attention of policymakers and the media than researchers within the academic community (Rich, 2004). National organizations such as Pew Center on the States, the Council of State Governments, the Urban Institute, and The Sentencing Project, released books and

research briefs during the 2000s that documented some of the problems of the U.S. penal system, as well as provided some recommendations for change (see: Travis, 2005; Pew Center on the States, 2008). The Council of State Governments' *Report of the Re-Entry Policy Council* (2005), for example, provided state policymakers with data on prior existing successful prisoner reentry programs and provided states with specific policy recommendations.

### **Conservative and liberal approaches to crime**

Ren, Zhao and Lovrich (2008) examine the different way liberals and conservatives approached crime control during the 1990s. They explain that conservatives generally attribute crime to individual, moral failings. In this view, criminals are rational beings that make decisions about criminal decisions based on costs and benefits. Conservatives suggest that by increasing the costs of crime, people will be less likely to commit crimes. This approach to crime control focuses on enhancing social control mechanisms, not only in the criminal justice system, but also in families and schools. Generally, conservatives favor “tough on crime” approaches such as increasing the operational and surveillance capacity of local law enforcement departments, as well as increasing sentencing lengths for criminal offenses. Liberals, on the other hand, tend to focus on the causes of crime, noting that inequality, disadvantage and disorganized social environments lead to criminal behavior. Liberals contend that increasing punitive approaches will likely only have a short-term effect

on crime if the underlining conditions that lead to crime are not addressed. “The liberal framing of the crime issue as a *social equity* problem rather than one of insufficient social *control* summarized the great difference of beliefs as to fundamental causes of crime separating liberals from conservatives” (p. 318). Liberals tend to support community development initiatives, increased social support for disadvantaged communities and rehabilitative programs. The authors examined the effect that liberal and conservative policies had in large U.S. cities in the 1990s, and found that both increasing local police capabilities as well as an expansion of community development initiatives decreased crime rates. Both liberal and conservative approaches seemed to be effective.

Ren, Zhao and Lovrich’s analysis is worth noting, because the justice reinvestment literature repeatedly returns to these two subjects: providing increased resources to local law enforcement agencies and community corrections, as well as identifying place-based strategies to increase community capacity and development. However, as noted below, it seems that increasingly, that as states craft policies drawn from the justice reinvestment data-collection stage, that the policies that are enacted, in nearly all cases, increase the capacity of local law enforcement and community corrections, but rarely address community development and increased community capacity.

## Prior criminal justice policies

Many of the organizations, both locally and nationally, that support Justice Reinvestment Initiative have, over the past decade, also supported sentencing reforms, prisoner reentry initiatives, and problem-solving courts. Of those states that have passed policies based on the justice reinvestment process, several have considered one or more of these options as ways to improve the functioning and efficiency of the criminal justice system. Prior enactment of these policies within a state may indicate that policymakers have already considered options to improve the functioning of the criminal justice system, as well as indicate receptiveness towards the “policy entrepreneurs” (Kingdon, 1984; Mintrom, 1997), both locally and nationally, that advocate for criminal justice reform.

Changing opinions about marijuana may also be relevant to the adoption of Justice Reinvestment Initiative. The punitive sentences prescribed during the past decades of the “War on Drugs” have progressively been called into question, particularly for marijuana offenses. Increasingly, citizens are supportive of the legalization of the use of marijuana. A recent Pew Research Center survey found that two-thirds of Americans support legalization (Daniller, 2019). Previous enactment of medical marijuana laws may indicate willingness on the part of policymakers to think outside the “War on Drugs” framework of the past decades, and to consider alternatives to incarceration for substance abusers.

## Criticism, support, and recommendations for change

The Justice Reinvestment Initiative and the justice reinvestment concept is not without critics. Even those that supported justice reinvestment initiatives and saw great promise in their application, voiced concerns that justice reinvestment is not sufficiently defined, with many details left open for consideration (Clear, 2011; Burch, 2011). Clear (2011), an early advocate for justice reinvestment, returned to some of the original conceptual grounding of justice reinvestment developed by Tucker and Cadora in 2003, and attempted to provide a path forward to help incentivize not only community corrections, but also the building of community capacity, a part of justice reinvestment that seems to have fallen by the wayside in implementation. He saw a clear role for private-sector involvement in justice reinvestment. Clear also pointed out several areas of concern with justice reinvestment as it is currently conceived and implemented: that strategies to reduce reentry and recidivism can only make a small dent on prison populations, without additional attention to needed sentencing reforms; savings realized from reduced prison populations are funneled into government programs that help ex-offenders, at best, and back into state general funds, at worst; the justice reinvestment literature puts too much emphasis on cost avoidance (e.g., avoiding prison future prison construction), rather than focusing on ways to significantly reduce prison populations (noting here the significant political challenges of laying off staff or closing prisons); and, identifying what constitutes savings, and

how to makes use of those savings so that they can be reinvested to the community level is difficult on many levels (e.g., Does cost aversion really count as savings?).

Fox, Albertson & Wong (2013) in their book about justice reinvestment discussed how justice reinvestment has been conceptualized and implemented in the United States and the United Kingdom. They suggested that practitioners generally take one of two “broad approaches” (p. 44) in the implementation of justice reinvestment: the first which ties criminal behavior into a broader social context and aims to create change both within the criminal justice system and in the larger community, and the second, which focus attention on the criminal justice system itself, and identifies ways to make it more efficient (p. 44). That justice reinvestment is conceptualized so broadly by so many is troubling to the authors and they note that this discrepancy is due to the fact that justice reinvestment is theoretically underdeveloped.

They attempted to provide a theoretical underpinning for the concept, but noted that developing theory is difficult because the methods supported in the use of justice reinvestment (experimental criminology, systematic reviews, evidenced-based programs, and other sources of data collection such as the use of Geographical Information System (GIS) in justice mapping) are largely positivist in nature. Criminological theories that are aligned with positivism generally support the idea that criminal behavior is the result of rational thought processes that are removed from a larger social, historical and cultural context. The authors were of the opinion, however, that such theories do not adequately explain the ways in which people make

decisions based on norms of behavior or cultural values. Because nearly all justice reinvestment initiatives focus on preventing crime (both initial offending, and reoffending) they believe that a theory of justice reinvestment must explain human behavior. They explained:

The insights of the behavioral approach to economics stress context and community involvement in economic decisions—including the decision to become involved in criminality. We suggest that justice is best served by focusing on interventions—prehabilitative, sentencing and rehabilitative—which view the (potential) offender in the context of the community. We have argued that the success of the community in diverting potential offenders from crime relies heavily on social capacity; the state of the built environment; education; and employment opportunities which provide reasonable security and legitimate access to a reasonable quality of life (p. 199).

In their view, justice reinvestment approaches that focus exclusively on the criminal justice system do not adequately address the reasons for individuals' underlying behavior, and may not be as effective in reducing crime as those which taken into account the broader social context.

Others are weakly optimistic, but wary of the promises extolled. Maruna (2011), for example, warned that justice reinvestment may suffer the same fate as similar movements in criminology that failed to reduce incarceration rates in a meaningful way. He explained that the problem with justice reinvestment “is the translation of beautiful ideas into workable policy” (p. 662), and notes that justice

reinvestment emerged with little theoretical grounding, and with little attention to the mistakes of the past. Of these, he suggested that the penal reform movements in the 1970s, “the justice model” and the restorative justice movement, have much in common with justice reinvestment, notably bi-partisan support and attention from the mainstream media. However, despite good intentions, these reforms failed to have a real impact on the criminal justice system. In particular, both movements were co-opted by interest groups, while programs that remained true to the original ideas were generally seen as “fringe” programs (p. 667).

Weisberg and Petersilia (2010), offered similar concerns about recent criminal justice reform movements, such as justice reinvestment. They noted that while the stated political aim to reduce incarceration is good, there may be unintended consequences to these reforms. They worried that efforts to downscale prisons and to incentive community corrections may not be occurring with a thorough understanding of the reentry needs of ex-offenders. Because there is a risk that much will be lost in the implementation of programs, they suggested that it is important that reform efforts are feasible, and that those involved fully understand changes asked of them, and have the resources they need to ensure that the programs work. They provided as an example the deinstitutionalization of psychiatric hospitals under the *Community Mental Health Act* of 1963 (P.L. 88-164), which mandated that people with mental illness and/or intellectual disabilities be released to the community, despite the fact that there were not adequate treatment and support options available in local communities to handle that transition (p. 127). In addition, they note that prior



probation reform movements have also had unanticipated results. For example, the intermediate sanctions movement of the 1980s was implemented poorly, resulting in poor funding and support of rehabilitation programs, while supervision capabilities were broadened. Instead of decreasing the number of people under the supervision of the correctional system, these movements had instead a net-widening effect. Because the programs were implemented poorly, it was assumed by policymakers that rehabilitative models do not work, and led to decreased interest and support in rehabilitation programs, in general. They cautioned that there is a real risk of repeating the same mistake. Budget deficits in states may be driving the interest in reducing incarceration, but it also drives interest in cutting social programs across the board. If community-based programs are not adequately supported and funded, justice reinvestment initiatives will likely fail.

Other scholars suggested that justice reinvestment is merely a tinkering with policies at the edges of the criminal justice system, which is unlikely to result in large-scale change. Austin (2011), for example, noted: “Here the powerful constituents of the status quo perceive justice reinvestment to be a means for making the huge criminal justice system more efficient but largely intact” (p. 632). Tonry (2011) argued similarly that, for decades, proponents of criminal justice reform have been “arguing disingenuously” (p. 637)—they believe the status quo to be morally reprehensible but make arguments to appeal to policymakers based on cost-savings and efficiency. He argued that prior reform efforts that sought to increase the capacity of community corrections have failed because of lack of political will, foresight,

funding and “implementation failures” (p. 643). He saw little hope for justice reinvestment to succeed where these past movements failed, noting in particular that without broad scale change there will not be enough of a reduction in the prison population to make reinvestment a possibility. He also suggested that if savings were realized, it is highly unlikely that state governments would be willing to turn that money over to communities. Instead, Tonry argued that the only real path for reform will come through the making of moral arguments—that sentences are excessive, that people are incarcerated for far too long, and that the system is unjust.

A white paper published by the Sentencing Project and authored by ten criminologists affiliated with eight different organizations provided an analysis of the Justice Reinvestment Initiative, as of 2013. They suggested that there are several shortcomings of the Justice Reinvestment Initiative (JRI) as it is currently implemented. They stated:

Current efforts, particularly under the rubric of the JRI, aim too low, achieve too little and lack the local organized support—eclipsing even—much of the reform energy and support needed to realize sustained reductions in the U.S. correctional population. This has resulted in legislative achievements which do not go deep enough... In spite of its successes, JRI has been unable to reduce correctional populations and budgets below the historically high levels which persist today. Nor has it steered reinvestment toward the communities most weakened by aggressive criminal justice policies (Austin, et al., 2013, pp. 3-4).

The authors suggested that claims by Council of State Governments and Pew that prison populations have been dramatically cut as a result of the Justice Reinvestment Initiative are over-blown. They argued that these claims, based on projected prison populations several years into the future, could not have predicted that prison admissions would decline and/or stabilize across the nation; instead, they predicted increased growth. Despite this decline in prison admissions, only one of the Justice Reinvestment Initiative involved states had realized a significant reduction in their prison population.

The authors suggested that the Justice Reinvestment Initiative does have some positive merit, most of all for “having created a space and a mindset among state officials to seriously entertain the possibility of lowering prison populations” (p.1). They suggested that reformers should take advantage of the current climate, and the willingness of policymakers to consider policy changes, and find ways to make justice reinvestment more effective. Just a few of the suggestions they offered include: reducing prison admissions through policies designed to decrease arrests and revocations to prison for minor offenses; reducing lengths of stay in prisons by way of sentencing reforms; identifying ways to incentivize the use of community corrections and county jails; and, building strong coalitions of local leaders, advocates and members of state and local government to pinpoint community-level solutions to crime.

Gottschalk (2015) noted that the focus on what she calls the “three R-s – reentry, recidivism and justice reinvestment” (p. 79) by policymakers, foundations and

think tanks, leads to reforms that are incremental in approach and unable to make major and much needed reforms to the American criminal justice system. She noted that these reforms constitute a neoliberal approach that “promises to give people a second chance, never acknowledging that many of the people cycling in and out of prison and jail were never really given a first chance, let alone an equal chance” (p. 79). She suggested that, in particular, equating success with recidivism is troubling, because there is a wide variance in how recidivism is measured, and other important markers of success (such as decreased mortality rates for returning prisoners) are ignored. Of concern, she suggested that the attention brought to the three R’s approach takes attention away from other strong efforts to challenge the carceral state. She explained:

Justice reinvestment, as practiced today, raises a fundamental political question: is it truly possible to make serious reductions in the size and gross inequities of the carceral state through a largely top-down process that is ostensibly non-partisan and politically bloodless? The top-down justice reinvestment approach is not designed to tap into and nurture the growing movement in many states and communities to challenge the enormous size and wide-scale injustices of the carceral state. Indeed, it may be thwarting the emergence of a broad-based political movement with the power, resources, wherewithal, and vision to mount a sustained attack on the carceral state that will result in sizable reductions in the prison population and its retrenchment in other areas (p. 100).

In addition, she suggested that justice reinvestment reforms targets “nonserious, nonviolent, and nonsexual offenders –the so-called non, non, nons” (p. 116). In her view, focusing only on these populations is unlikely to lead to the large-scale reforms needed to reduce the carceral state.

Petersilia (2015) in her review of Gottschalk’s book noted that she disagrees with her assessment that current reform efforts are problematic, and that a broad-based social movement is needed instead to make real changes to the current criminal justice system. Noting that “we live in the real world” (p. 631), she explained that undoing mass incarceration will require an enormous amount of effort, far beyond just reducing incarceration. For this reason, Petersilia noted that she supports these reform efforts. She explained:

By reducing incarceration and diverting the substantial cost savings into such initiatives, we can give millions of offenders the opportunity to succeed. Not all will do so. But one by one, individual by individual, the majority will become a living, breathing library of success, resuming productive lives among the rest of us and gradually but significantly reducing the stigma that now consigns ex-convicts to a near-hopeless second-class existence. In this way, we will help former offenders demonstrate that they can move beyond their criminal pasts to productive citizenship. We will help them exit the shadows of society that once trapped other stigmatized groups, from single parents to gays. While progress will be slow, perhaps these human stories—this positive parade

of ex-offenders proving that a past mistake does not define an entire life—will create the broader social movement Gottschalk hopes for (632).

Petersilia's critique of Gottschalk's argument underscores the tension between those that support and applaud incremental reform approaches and those that prefer that money, attention, and energy were drawn to more far-reaching, social justice oriented reforms.

Sabol and Baumann (2020) provided a review of the justice reinvestment literature and analysis of how it changed over time, and concluded that both justice reinvestment, as first conceived, and the Justice Reinvestment Initiative failed to meet their stated goals. They explained: "The JRI, which had success in enrolling states, accelerating the pace of legislative change, and adopting EBPs, did not demonstrate that it led to reductions in prison populations, cost savings, or improvements in public safety" (p. 333). While the adoption of evidence-based programs is listed here as a success, they also noted some concerns about the way in which this occurred. They suggested that the Office of Management and Budget had a focus on evidence-based programs and practices in the mid-2000s, and the Bureau of Justice Assistance may have settled on justice reinvestment as one suitable vehicle to promote evidence-based programs. They explained:

Given the federal priority on evidence-based practices and the relative lack or absence of evidence about effective community-based justice reinvestment efforts coupled with knowledge of EBPs that focused on offenders' risk and needs, federal funding priorities emphasized the evidence-based practices that

helped to shift the focus of JRI toward the state-agency and TA-led models (p. 325).

The evidence-based framework created limitations in the potential programs the Bureau of Justice Assistance would consider. Because the evidence-base around community development initiatives was small, these strategies were not used to a great extent. The authors also noted that the focus on risk and needs assessments by justice reinvestment stakeholders did not include enough analysis of the implementation of these tools. In addition, the Justice Reinvestment Initiative led to broad adoption of many other programs without sufficient understanding of implementation, outcomes and effectiveness.

Sabol and Baumann also noted that arguments related to cost-savings were problematic. Justice expenditures are typically only a small part of state budgets, and prison closings are unlikely without widespread reforms, particularly those that focus on reducing sentences for violent offenders. The focus on cost-savings could also lead to unintended consequences such as the pressure to reduce costs for important programs in prisons in an effort to create savings. They also outlined some of the concerns related to using prison projections to estimate cost-savings (as also noted by others elsewhere in this review). In conclusion they noted, “JRI set a relatively low bar for reducing prison populations, oversold the potential cost savings, and ultimately did not deliver evidence that it was responsible for either” (p. 334).

## **The diffusion and adoption of policy innovations**

It is clear that justice reinvestment is not entirely a new idea. This review has summarized just a few of the broader social, political and academic roots of the justice reinvestment movement. It has its roots in prior reform movements focusing on community corrections, restorative justice, and reentry; it is theoretically linked with social disorganization theory within the field of criminology; and it can be seen as a continuum of efforts by academics, scholars and advocates to change the decades-long trend of increased incarceration in the United States. Yet, justice reinvestment can be considered a unique policy innovation as it differs from prior criminal justice policies in four ways: (1) it is a process by which a range of policies may be enacted, rather than a specific policy; (2) there is an emphasis on data collection and evidence gathering to guide decisions; 3) there is an explicit emphasis on reducing the use of prisons; and (4) there is an emphasis on understanding the local, contextual and spatial aspects of crime and incarceration. Given that the U.S. criminal justice system has been targeted by so many as being inefficient, immoral, and costly, justice reinvestment is an innovative approach to criminal justice policy-making that has the potential to move the United States away from the status quo. As such, the process by which the justice reinvestment concept has diffused to the American states is in need of examination.

This next section provides a limited review of research drawn from the vast policy diffusion and adoption literature. The section begins with a summary of a few



of the prominent diffusion studies. Next, policy characteristics that may influence the diffusion process are addressed, with a number of studies that examine criminal justice policies summarized in this section. This section also provides a review of the literature on a few of the elements that may have played an outside role in the diffusion of justice reinvestment. The first of these are “policy entrepreneurs” (Kingdon, 1984; Mintrom, 1997) which serve an important role in conceptualizing and defining policy and advocating for its adoption. The role of the federal government, and the influence of federal funding in the policy diffusion process is also discussed. Finally, drawing from Kingdon (1984), a number of variables are presented that together may have contributed to a “window of opportunity” for reform—creating a moment in time when state policymakers’ were particularly open to the influence and expertise of the national organizations and the additional financial support provided by the federal government through the Justice Reinvestment Initiative.

### Prominent diffusion studies

In his seminal examination of the diffusion of innovations in 1962, Rogers suggested that, “*Diffusion* is the process by which an innovation is communicated through certain channels over time among members of a social system. It is a special type of communication, in that the messages are concerned with new ideas” (Rogers, 1983, p. 5). In this text he emphasized how diffusion occurs through the process of learning and communication over a period of time. Certain conditions must be met for

diffusion to occur, and the process always occurs through social systems. While Rogers' framework for diffusion research continues to dominate the literature, it has certain limitations when applied to the study of policy diffusion. In particular, many criminal justice policies have been enacted in a pattern dissimilar to the one laid out by Rogers.

Rogers provided an extensive literature review and history of diffusion research. Early studies of the diffusion process were often conducted by rural sociologists interested in the spread of agricultural innovations in the United States, as well as developing nations. Yet, diffusion research has since branched out to many academic arenas, becoming what Rogers called an "invisible college" (p. xvii). In most cases, despite the subject under observation, the rate of adoption for innovations occurs in an s-shaped pattern on an x-y axis. The slope of the curve may differ as some innovations are adopted more quickly than others, yet the s-shaped pattern is generally still evident. Rogers suggested that this unique pattern shows evidence of learning and communication as ideas spread through a social system over time. The bottom of the s-shaped curve, which is relatively straight, represents the innovators and early adopters of the idea. As others learn from the experiences of these groups, he suggested, the early majority (which can be seen as the bottom of the s-shaped curve) and the late majority (the top of the s-shaped curve), and the laggards (the relatively straight line at the top of the s-shape), adopt the innovation (p. 23).

The rate of adoption will occur more quickly if certain characteristics are met. Individuals, as well as collective entities, such as organizations, villages, or even

states, are more likely to adopt innovations if they are perceived to be better than what has come before (*relative advantage*); are compatible with values, traditions, experiences, and norms (*compatibility*); are not unnecessarily difficult to use and understand (*complexity*); can be adopted on a trial basis, before a full commitment is required (*trialability*); and, results are clearly visible to others who are interested in the innovation, but have not yet adopted it (*observability*) (p. 15-16).

The diffusion of innovations occurs in a social system. As such, certain actors within the social system can hinder or help the diffusion process. Rogers distinguished between “change agents” and “opinion leaders.” Change agents are generally professionals and technicians who are outside the social system in which the diffusion occurs. Rogers characterized these individuals as “heterophilous” to the system, and noted that their differences may hinder effective buy-in and understanding of the innovation. Opinion leaders, on the other hand, are generally “homophilous” to the social system, and are made up of local leaders and others of high regard. Diffusion of innovations is most likely to occur quickly if change agents are able to maintain the interest and enthusiasm of opinion leaders (p. 331).

In the third edition of his book, Rogers noted that several criticisms of the diffusion framework have been put forth. Much of diffusion research has a “pro-innovation bias” (p. 92), and takes for granted that innovations *should* be diffused. In some cases, the innovation, such as certain drugs like methamphetamine, may have questionable value. In other cases, the innovation may have more value for the entity that wishes to diffuse the product or program than it does for the community who

eventually adopts it (as in the case of many international development projects over the past several decades). The pro-innovation bias leads to a “source-bias” (p. 103) in research, where researchers assume that if the innovation was not adopted, the individual is to blame, rather than the system. An additional criticism of diffusion research is that most research is conducted of innovations that have already been adopted, leading to a problem of recall, and difficulties establishing causality, as most studies use cross-sectional, rather than longitudinal, data,

An early application of the diffusion of innovations framework to policy work is Walker’s (1969) analysis of 88 different policies adopted in the United States between 1870 to 1965. A central premise of his work is that certain states have historically been more innovative than others. Through examining the myriad of policies within his studies, he determined an innovation score for each state. Drawing from Rogers work, among others, he hypothesized that more innovative states will share certain characteristics in common (such characteristics are found not only within political systems, but other smaller social system units as well). His findings suggested that innovative states are “bigger, richer, more urban, more industrial, have more fluidity and turnover in their political systems, and have legislatures which more adequately represent their cities” (p. 887).

Not satisfied with this finding, Walker next asked what elements provoked policymakers to put these policies on the agenda in the first place. He cited the (now classic) works of Lindblom (1969) and Simon (1957), which details the vast array of information that overwhelms policymakers, and the decisions they must make to

simplify and speed up the political decision-making process. Looking to other states, which are similarly situated, for example, is one way that policymakers can make the decision-making process easier. If a program has been successfully implemented in one state, a similarly situated state will be more likely to adopt it. While learning from others is a central component of the adoption process, states may adopt for other reasons as well, such as competition, the desire to comply with national standards, or to avoid the appearance of being “behind the times.”

Walker hypothesized that, in most cases, similarly situated states will lie within the same region of the country. In each region, a regional leader should emerge, which should correlate with a state that has a high innovator score. He tested this hypothesis through the use of factor analysis. His findings showed some support for this hypothesis, but he notes that loadings are not always clear. Some states load on more than one group, while in other cases, states that are not within the same region loaded on the same factor.

Walker questioned the influence of organizations, such as the Council of State Governments and other professional organizations, on the dispersal of policy information. He noted that these organizations provide a forum for policy exchange and learning, while also playing a central role in the setting of national norms and standards. He speculated that these organizations could play a role in speeding up the rate of adoption for policy innovations, and his analysis supports that the diffusion process tends to occur more quickly than in the past. However, he noted that these

national, professional organizations have not yet reduced the impact of regional diffusion.

A slightly more recent and oft cited review of the policy diffusion literature by Berry and Berry (1999) explained that before 1990 most researchers had taken either one of two approaches to the study of policy adoption in the United States. In the first of these approaches, states are not seen as influenced by the action of other states, and instead adopt policies that are reflective of the political, social and economic realities unique to the state; that is, the *internal determinants*. Researchers using an internal determinants model may allow that policy ideas diffuse from state to state, but maintain that, ultimately, adoption decisions are not made because of other states' actions. For a state to decide to adopt an innovation, a few general conditions must be met. A state's level of innovativeness, such as outlined by Walker (1969), may be one factor that influences adoption. The severity of the problem within the state is a strong motivation for adoption, along with the electoral concerns of politicians, who may be more receptive to policy innovations depending on close electoral contests or issues of high public salience. Policy innovation is less likely if obstacles stand in the way of adoption, and if there are not sufficient resources at hand to surpass these obstacles. The state's wealth, fiscal health, governmental capacity, economic development, and leadership are examples of such resources. In addition, Berry and Berry cited Kingdon's (1984) notion of "windows of opportunity" as a variable within the internal determinants model.

The second approach, considered by researchers studying policy innovation, consists of the various policy diffusion models. Berry and Berry suggested that these models assume that states are influenced by the action of other state (as well as federal) governments for three reasons, similar to those proposed by Walker in 1969. The actions of other states provide opportunities for learning, drive states to compete with each other, and create nationally regarded standards, which encourage states to conform to the prevailing trends. The authors outlined in detail several diffusion models that examine policy adoption from different perspectives.

The first, *national interaction models*, assume that policy diffusion occurs primarily through national networks where policy learning occurs. The Council of State Governments or the National Governors' Association are two examples of such networking opportunities. Increased interaction with these networks raises the probability that a state will adopt the policy. This model clearly follows the s-shaped learning pattern described by Rogers (1983). *Regional diffusion models* assume that states are most influenced by the states closest in proximity. States may adopt policies to compete with neighboring states, or may adopt after witnessing and learning from the experiences of these states. *Leader-laggard models* assume that some states tend to be more innovative than others, and pave the way for policy adoption in less innovative states. *Isomorphism models* suggest that states are most influenced by states that are similar to them. This similarity may include a regional element, but it may also include concepts such as: ideological proximity, population density, socio-economic similarities, or similar types of bureaucratic systems. *Vertical influence*

*models* trace the influence of the federal government on states' decisions to adopt policies. The federal government may influence states by providing innovative leadership and learning opportunities, or through other means such as mandates and incentives.

Berry and Berry suggested, however, that there are significant shortcomings to all of these approaches, and contemporary research shows that in most cases both the internal determinants of states and diffusion models account for policy adoption within states. They suggested that past efforts to isolate only one influence on state adoption are methodologically weak. They proposed a “unified model of state government innovation reflecting both internal determinants and diffusion” (p. 237). They also encouraged the use of event history analysis as the superior approach to understanding policy adoption, outlining in depth the methodological errors that arise from the other analytic approaches used in policy adoption studies (cross-sectional regression, time-series regression and factor analysis).

#### Policy characteristics and diffusion

While Berry and Berry's literature review and analysis is extensive, an important component of policy innovation adoption and diffusion that is missing, and which is extremely relevant to criminal justice policy, in particular, is greater insight into the types of policies that are more or less likely to diffuse rapidly. Mooney and Lee (2001), in their work on morality policy, demonstrated that those policies that can



be defined as morality policies tend to diffuse rapidly, with little to no learning period included in the diffusion process. This rapid diffusion, unlike other diffusion trends, does not result in the classic s-shaped pattern that is generally attributed to the learning process over time, but rather shows differing patterns; for example, a pattern that begins with a steep increase as the beginning states adopt the policy, and flat-lines as the remainder of states quickly follow suit. Mooney and Lee explained:

Morality policy involves issues on which there is significant disagreement about first principles. These are not questions about which policy might best achieve a commonly held goal, but they are debates over basic policy goals themselves...Since morality policy validates certain basic values and rejects others, it redistributes moral values just as surely as a progressive income tax scheme redistributes economic values (p. 173).

They noted that most morality policies have two things in common: they are extremely salient to the general public and technically simple. For this reason, the average citizen is likely to not only have an opinion on the matter, but also have clear ideas how the problem should be solved. Their study of death penalty legislation across the American states suggests that the rapid diffusion process associated with morality policy can only be tempered, to where it resembles the S-shaped learning pattern common to most policy diffusion, when the policy is effectively “demoralized” (p. 175). They explained: “If advocates can successfully characterize the policy as being one of incremental change, low salience, and high complexity, it may pass through the legislative process quietly and unmolested” (p. 175). This notion of the demoralization

of policy is of particular interest to the study of criminal justice policy, as many scholars have linked the rapid expansion of America's prison population to the quick diffusion of policies, which have occurred in response to political, cultural or historical forces, rather than crafted after careful analysis of existing evidence (e.g.: Garland, 2002; Simon, 2007; Lynch 2011).

Pierce and Miller (2001) provided some insight into how a morality policy can become demoralized in their study of state lottery adoptions. They showed how aspects of the policy process, from agenda-setting to diffusion, differ when the planned lottery is used for the purpose of generating revenue for education, rather than a state's general fund. Funding for education provides opportunities for policy entrepreneurs (Kingdon, 1984; Mintrom, 1997), already connected to established interest groups, to frame the policy agenda as concerning the welfare of children. This shift in symbolic imagery towards the needs of children and away from gambling helps to demoralize the issue. Their analysis showed that in contrast to lotteries that provide revenue for the general funds, lotteries that fund education were not affected by fundamentalist religious groups.

Makse and Volden (2011) drew upon Rogers' work on the diffusion of innovations to examine how the attributes of policies can influence the diffusion process. They used Rogers' list of five attributes (relative advantage, compatibility, complexity, observability, and trialability) to examine 27 criminal justice policies that were passed between 1973 and 2002. They conducted a nationwide survey of practitioners within the criminal justice system, legislators who serve on criminal

justice committees, and law professors familiar with these policies, and asked them to rate them based on the five attributes. They found that “policies with high relative advantages, high compatibility, low complexity, high observability, and high trialability all spread across the states at a greater rate” (p. 122). States were more likely to learn from the experiences of other states when results were easy to observe, and were less likely to rely on the learning experiences of others when they could easily conduct their own experiments. Additionally, very complex policies made learning from other states difficult; if such policies were also not compatible with existing policies they were unlikely to diffuse widely. The authors suggested that one shortcoming of their work is that their study does not take into account the impact of individuals, organizations or interest groups that may influence policy adoption. They suggested that “The presence of such actors may serve to make complex policies more comprehensible to legislators and to simplify legislative formulation, while the effects of largely unobservable policies may be illuminated by experts with inside knowledge of adopters’ experiences” (p. 122). They suggested that future studies find ways to examine how policies are conceptualized and targeted to policymakers.

Nicholson-Crotty (2009) also explored how the characteristics of policy influence the diffusion process. He questioned why some policies diffuse rapidly, seemingly without any period of learning, observation, or data-collection on the part of states. He speculated that,

In some cases, however, the perceived *immediate* electoral benefits of adopting a policy are sufficient to outweigh perceived long term costs and preclude the

need for long term benefits. In those cases, rational lawmakers in a large number of states will forgo the gathering of information in favor of immediate adoption, creating a rapid diffusion process (p. 194).

Similar to Mooney and Lee (2001), Nicholson-Crotty hypothesized that the degree of public salience and technical complexity has a bearing on the rate of policy adoption. He tested this assumption through a meta-analysis of 57 prior diffusion studies between 1969-2006. He used the number of citations in *The New York Times* as a measure of saliency, and creates a dichotomous measure of technical complexity for each policy. Recognizing that other variables are likely to influence the diffusion process, he also controlled for federal funding, the year which marks the beginning of the diffusion process, the reputation of the states that first adopted the policy, and the role of policy entrepreneurs. While all the controls have an impact on the rapid diffusion of policies, they alone cannot explain this diffusion process. His tests also showed significant support for his argument that policies high in saliency and low in complexity diffuse more rapidly than others.

One of the case studies offered by Nicholson-Crotty in this article discussed the rapid diffusion of three-strike policies in the United States. He explained that California was the first state to adopt a three-strike law, and within two years 24 states had rapidly followed suit. He argued that the issue had very high public salience, garnering significant media exposure. In addition, the policy was low in technical complexity, which allowed the average voter to make quick decisions about its merits.

As a result, the adoption of three-strike laws was driven primarily by electoral concerns, rather than through a process of data-gathering and learning. The adoption of individual development accounts is offered in contrast to three-strikes as an example of a policy low in public salience and high in technical complexity. In this case, states were slow to adopt the policy, and learning from other states' experience played a major role in the diffusion process.

Karch and Cravens (2014) in their study of three strikes laws focused on policy modification after the initial adoption of the policies across the states. They noted that the rapid adoption of these laws follow the characteristics of a "policy outbreak" (p. 463), yet states differed greatly in how the laws were implemented and modified after the adoption. While the learning process may have been shortened or non-existent during the initial adoption, states took a more incremental and learning approach as they made decisions to modify the policy. They found that in the initial adoption event, racial diversity, police officer unions, and the ideological environment all influenced adoption. However, different state characteristics influenced the modification of these laws. They found that states that were less liberal, less fiscally healthy and did not use the state ballot process were more likely to modify these laws. Neighboring states also influenced policy modification. Strong stakeholder groups, such as police unions and private prisons made reform less likely in states.

## Criminal justice policy diffusion

It should be noted that in Nicholson-Crotty's study (2009), criminal justice policies (among other types of policies) were "typically coded as noncomplex" (p. 198), and are generally high in public saliency, but low in technical complexity, and therefore quickly diffused. His analysis of criminal justice policy diffusion is aligned with major works in the criminological literature that argue that it is precisely this rapid diffusion of policy, made in response to electoral concerns, over and above the collection of data and information, that has led to "mass incarceration" in the United States (e.g.: Garland, 2002; Simon, 2007). Stemen (2007), in his unpublished dissertation, disagreed with this dominant view in the literature, and suggested that criminal justice policy scholars have not done enough to examine the wide array of criminal justice policies that have passed since the 1970s, and the characteristics of each that have led to differing rates of adoption. He suggested that these works simplify the political process, assume homogeneity of response on the part of American states, do not account for the actual intent behind the policy, and "presuppose a common unity to the sentencing and corrections policy changes of the 20<sup>th</sup> century—that all policies have the same causes, are all indicators of the same underlying phenomenon, and are all commonly or universally adopted across the states" (pp. 12-13).

Stemen examined ten different sentencing and correctional policies from 1970-2002, and grouped them into three types based on policy intent. *Developmental*

policies were intended to change systematic procedures and practices; *expressive* policies were intended to counter public concern over rising crime rates, and “communicate moral outrage over particular behaviors and assert moral discipline over certain groups” (p. 90) generally through increasing sanctions; and, *responsive* policies, which were enacted to counter the problems of overloaded correctional and justice systems. In his analysis of these ten policies, Stemen found that developmental and responsive policies diffused slowly, with states learning from the experiences of first adopters. In contrast, expressive policies diffused rapidly, “generally in election years with significant electoral competition, with a divided legislature, and when neighboring states or ideologically similar states had either already adopted or were currently adopting a similar policy” (p. 98).

Stemen examined policies within a grouping of each of these types in relation to other explanatory variables that may also contribute to the diffusion process. These variables include those that are correlated with state characteristics (i.e., internal determinants, such as: the problem environment, demographics, economics, politics, ideology), and to diffusion processes (the influence of neighboring and ideologically similar states). He found that these variables explain a portion of the diffusion of the policy to different extents based on the type of policy. In contrast to many criminological texts, he found little support that criminal justice policies, writ large, are typically enacted in response to electoral concerns; rather, other variables seemed to play a much larger role in the diffusion process (p. 222). It can be argued, however,

that certain variables (such as ideology and the problem environment) may cross over into politics, and therefore his measurement does not accurately capture the political environment of the state. In addition, his analysis found that expressive policies did correlate with electoral concerns, although not consistently. Since many of these policies may have had a greater contribution to prison populations than the other two types of policies, his argument that his analysis disproves prior criminological analyses of the current American penal system seems over-confident.

A shortcoming of Stemen's work is that he did not include any measure for vertical influence, national interaction, or internal leadership. His analysis did not take into account the influence of federal law and federal funding, or the presence or absence of interest groups, policy entrepreneurs, or professional organizations. This is particularly surprising given that many of the criminological texts that he critiques in his work link federal initiatives, such as the "War on Drugs," and federal legislation, such as the Omnibus Crime Control and Safe Streets Act of 1968, to the steep increase in the use of incarceration since the 1970s. Grossback, Nicholson-Crotty, and Peterson (2004), for example, suggested that states often "learn" from the federal government when taking into consideration policy initiatives. Spelman (2009) provided as an example the influence the 1994 Crime Bill had on state prison expansion. This legislation provided states \$10 billion in federal funds for prison construction, providing that the states passed truth-in-sentencing laws. By 1998, the number of states with such laws climbed from 4 to 27. In addition, many scholars have cited the



influence of powerful interest groups on criminal justice policy-making, such as the National Rifle Association, American Association of Police Chiefs, and the American Civil Liberties Union, among others (e.g., Houston & Parsons, 1998; Ismaili, 2006). Other national and professional organizations, oriented more towards research and technical assistance, such as the Council of State Governments Justice Center and the Urban Institute, have also had an influence on criminal justice policy in recent years.

Yet Steman's grouping of policies by intent is useful, in that it makes clear that not all criminal justice and correctional policies are created under the same conditions, with the same intent. Most of the very limited criminal justice policy diffusion literature tends to examine one type of policy in isolation. Bergin (2011) provided a review of 23 such studies found in journal articles from 1950-2009. Of these, several covered the same topic (e.g., twelve were on the topic of capital punishment). Bergin noted that, in general, these studies examine diffusion processes by examining three variables: geographic proximity of states, political ideology, and media attention. Overall, geographic proximity and political ideology had little or inconsistent overall effect on policy adoption, while media exposure did seem to correlate with policy adoption. While these findings are certainly interesting, Bergin stressed that the small sample of articles available for review, as well as the diverse methodologies and research designs employed in these studies, limits generalizability and understanding of policy diffusion and adoption across the board.

A recent published systematic review of the criminal justice policy diffusion literature by Sliva (2016) found that the greatest predictors of adoption in these studies were the role of the federal government and the influence of other states. Those factors that constitute a state's problem environment (e.g., state fiscal stress, imprisonment rates, crime rates, demographic information) were less likely to influence the adoption of criminal justice policies. Silva also found that the role of interest groups and media attention remained under-explored in these studies.

Spelman (2009) provided an exhaustive examination of the conditions that drive prison population in the American states. While he did not draw from policy diffusion theories, his conclusions shine light on the need to better understand the role that federal incentives and mandates have played in the expansion of the American prison population since the 1970s. He began his argument by stressing that while incarceration is a legitimate response to crime, the benefits of incarceration are far-outweighed by the costs as the prison population grows to an excessive point. The social costs of removing potential tax-paying citizens to prisons, where a year per prisoner can exceed \$35,000, as well as the costs to families and communities as these men and women cycle in and out of prison, is enormous. For this reason, he questioned why prison rates continued to climb across three decades, even during periods of falling crime rates.

Spelman summarized three studies that have attempted to understand prison population levels across the American state, and whether population counts are driven

by state-level characteristics. Consistent across these three studies was the finding that prison populations increase as the percentage of the African American population increases and with an increase in the percentage of Republicans in the state legislature. Prison populations decrease as states increase the amount of funding for education or welfare. Spelman cautioned that these findings should be taken with caution as they don't appropriately capture potential lags in time, and they provide little understanding of how these variables effect the prison population. Using these and other variables—the dependent variable is the number of prisoners under the jurisdiction of the state; independent variables are grouped under the following headings: social threats, public opinion and politics, electoral cycle, crime, prison crowding, sentencing policy, and institutional capacity—he examined what state characteristics have led to increased prison population. While he found that all of these variables, with the exception of social threats, are significant predictors of prison population increases, state financial resources explain 30 percent of the variance.

While spending across several policy domains was also increased during the period under examination, Spelman contended that corrections spending is unique because when prisons are built, prisoners are soon found to fill them. He explained, “Prison populations are largely driven by available capacity; when the money was available to increase capacity, policy makers spent it; when the beds were available, criminal justice agencies filled them” (p. 65). He ended his article with a straightforward proposition: if the federal government provided funding for

alternatives to incarceration, states would respond to crime through those alternatives, such as was provided to help states with the deinstitutionalization of the mentally ill in the 1960s. Instead, over the past few decades, federal incentives have encouraged prison construction. As such, there are very few viable and stable systems of community corrections and other alternatives to incarceration in the United States. Therefore, if crime rates begin to increase, states will respond by building more prisons.

#### Policy entrepreneurs and federal funding during a “window of opportunity”

The above mentioned studies provide details about the study of diffusion, particularly as it relates to criminal justice policy, and demonstrate the need to understand how the characteristics of policies may influence the diffusion process. However, these studies provide little insight into the processes of agenda setting. What are the reasons that state policymakers decide to bring these bills to the legislative floor? Classic diffusion of innovations studies suggest that diffusion happens through social systems over time, emphasizing the important role of learning within this process. Many public policies, do in fact, seem to correlate with this diffusion pattern, and several scholars have observed that some criminal justice policies also follow this path of diffusion. However, it is clear that many do not—they are diffused rapidly, with little to no evidence of learning.

Justice reinvestment, as a criminal justice policy, is technically complex, and seems to have low public salience, yet the concept has diffused to the majority of American states in a fairly short amount of time. As indicated above, some scholars have suggested that policies that are low in complexity and high in salience are more likely to diffuse quickly; policies such as the Justice Reinvestment Initiative should, then diffuse very slowly. However, many of these studies did not take into account two important influences: that of national organizations that provide guidance and information to states, and the influence of the federal government, by way of financial incentives and strong demonstrations of support, on states' decisions to adopt policies.

John Kingdon's book, *Agendas, Alternatives, and Public Policies* (1995, 2<sup>nd</sup> edition), provides an excellent framework for understanding how public policies come to be placed on the agenda. Kingdon suggested that when three process streams come together—the problem, policies, and politics streams—a “window of opportunity” opens for specific policy alternatives to be considered on the agenda. Well-placed policy entrepreneurs whom operate quickly within this brief window play a key role in placing their preferred policy alternative on the agenda. Kingdon explained that the first stream arises when a problem comes to the attention of policymakers. The second stream consists of the many people involved in crafting, lobbying for, and passing legislation. The third stream contains electoral concerns, political turnover, and citizen considerations. He explained: “Once we understand these streams taken separately, the key to understanding agenda and policy change is their coupling. The separate streams come together at critical times. A problem is recognized, a solution is available, the

political climate makes the time right for change, and the constraints do not prohibit action” (p. 88).

Kingdon suggested that one way that problems come to the attention of law makers is through “focusing events” such as high-profile media coverage of a disaster or tragedy. Criminal justice texts provide numerous examples of how tragic occurrences have led to the swift passage of legislation, such as in the case of numerous state sex offender notification laws and the federal *Missing Children’s Assistance Act* of 1984 that were passed quickly after media attention to the kidnappings and murders of several children (Best, 1987). Budget constraints, suggest Kingdon, are one of the most common reasons why policies are placed or removed from the agenda (p. 105). In the case of justice reinvestment, a quick review of the state case studies available on the Council of State Governments Justice Center and the Pew Public Safety Performance Project websites, show that in the majority of cases, budgetary constraints, combined with prison systems operating near or beyond capacity, are the stated reasons why the states turned to justice reinvestment strategies. This combination of factors is an example of a clear problem that would bring the justice reinvestment approach to policymakers.

While further analysis and data collection will help illuminate these processes, it seems reasonable to assume that the political environment has also been fairly hospitable for justice reinvestment strategies. Citizens anxious about budget deficits in their states put pressure on policymakers to find ways to reduce the budget. Recent federal legislation and federal funding through the Bureau of Justice Assistance

provides states with funding for alternatives for incarceration and community corrections. While the proposed federal legislation to support justice reinvestment at the federal level has consistently stalled in committee, the 2007 *Second Chance Act* provided funding for states to improve reentry services for returning prisoners. The passage of this prior legislation may have helped pave the way for the initial allocation of funds from the Bureau of Justice Assistance for this initiative.

Finally, the policy stream was likely influenced by high-profile organizations and actors who have advocated for justice reinvestment. As noted, several of these organizations have played a key role in the implementation process by providing technical assistance and data-collection expertise to state governments. In addition, individuals from nonprofits, interest groups, and academia, as well as policymakers and heads of state and federal agencies, have played a prominent role in proposing justice reinvestment as a viable solution to the problem of over-burdened prisons in cash-strapped states. Kingdon identified such people as “policy entrepreneurs.” He explained:

These entrepreneurs are not necessarily found in any one location in the policy community. They could be in or out of government, in elected or appointed positions, in interest groups or research organizations. But their defining characteristic, much as in the case of a business entrepreneur is their willingness to invest their resources—time, energy, reputation, and sometimes money—in the hopes of a future return (p. 122).

Kingdon suggested that policy entrepreneurs wait patiently for a policy window to open so that they are positioned to place their proposal on the table. They can advocate for their proposals, provide information to policymakers, and help connect the three streams in the policymakers' eyes.

While these organizations are diverse enough that they cannot be painted with a broad brush (e.g., Council of State Governments could be considered a trade association as well as a research institute), a short consideration of the ways and means these organizations collect data, generate possible policy innovations and “market” them to policymakers is warranted. While the literature on think tanks suggests that there currently exists no common agreement about what is or is not a think tank (see: Rich, 2004; Pautz, 2011; Stone, 2000) these organizations, which have been central to the justice reinvestment movement, have characteristics that place them within the category of think tanks<sup>9</sup>: they position themselves as politically neutral, they are non-governmental organizations that under the I.R.S. 501(c)3 status must extensively limit political activities, and they have an explicit goal to generate data and information that is relevant to policymakers.

Rich (2004) observed that scholars interested in public policy and political science have paid little attention to the work of think tanks, which he defined as “independent, non-interest-based, nonprofit organizations that produce and principally rely on expertise and ideas to obtain support and to influence the policymaking

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<sup>9</sup>The Urban Institute seems to be universally accepted as a think tank.



process” (p. 11). In contrast, a rich literature exists on interest groups. He explained, “In these characteristics, ideas and expertise represent strategic currency in the defense of interests but not substantially important and independent sources” (p. 8). He argued, however, that this view seriously undervalues the role that policy expertise has in the policy process, particularly as think tanks have in the past few decades matured in their policy marketing strategies—blurring the line between independent policy work and advocacy. He detailed how think tanks, in the earlier part of the 20<sup>th</sup> century, were seen as neutral policy experts, who provided essential data to policymakers, and were independent of interests and political orientations. However, in the latter part of the 20<sup>th</sup> century, the number of think tanks has increased exponentially, and many of these new institutes have a decidedly political stance or objective. He contended that this change has had the effect of increasing the presence of think tanks within the public policy process, while simultaneously expanding the amount of sometimes contradictory information that is at the disposal of policymakers. Think tanks, in an effort to be seen and heard, are also more likely to provide commentary and analysis on pending legislation that is immediate and visible, than to provide more extensive, long-range data collection and analysis on issues of less immediate focus, but no less worthy of examination. The combined effect is that the value of expert knowledge is being downgraded; he suggested that, “In fact, the collective credibility of their research products has eroded” (p. 25).

Relevant to the discussion of policy diffusion, which is a centerpiece of this study (see below), Stone (2000) considered the role that think tanks have in the

transfer of policy from one government to another. She suggested that think tanks play an important role in policy transfer; that is, they act as important “policy entrepreneurs” in the dissemination of ideas and alternative policy prescriptions to policymakers. She explained:

[T]hink tanks can be regarded as potential agents of policy transfer among the general body of policy entrepreneurs or experts of nations. Their potential importance to the process is their concentrated ability to diffuse ideas by (1) acting as a clearing-house for information; (2) their involvement in the advocacy of ideas; (3) their well-developed networks—domestically into the political parties, bureaucracy, media and academe; and internationally with other think tanks—and (4) their intellectual and scholarly base providing expertise on specialized policy issues (p. 46).

She explained that while think tanks cannot bring about policy transfer by themselves, they are essential in the “transfer of ideologies, or the attitudes and underlying ideas that inform policy approaches” (p. 48). While Stone focused her analysis on the role of think tanks in the spread of ideas about privatization, internationally, the process whereby think tanks help governments (whether within the United States or internationally) supports the important role that research institutes can play in the formation and dissemination of ideas. One piece of her analysis that deserves attention, and was largely neglected in Rich’s book, is the idea that think tanks can aid in the transfer of ideas by not only networking with policymakers and the media, but also by forming coalitions with other research institutes—both within and out of

academia. This, at first glance, certainly seems to be the case in the history of the justice reinvestment movement—as the idea progressed, voices from many different types of organizations were united in support of the idea.

While Kingdon’s analysis was at the federal level, the multiple streams framework has also been used at the state level. A recent analysis of public policy theories explains that several scholars have combined theoretical insights from multiple streams and theories of policy diffusion, most particularly in relation to policy entrepreneurs (Nowlin, 2011). Mintrom (1997, 2000), in particular, has written extensively about the role of policy entrepreneurs in policy diffusion. Mintrom (1997) explained that diffusion scholars have traditionally placed little emphasis on how policies are placed on the agenda; rather, they focus more on why policies are adopted. Mintrom contended that policy entrepreneurs play a key role in agenda setting, by providing information to policymakers, providing solutions to emerging or existing problems, and by advocating on behalf of the policy proposal. These individuals provide data on existing programs in other states, urge policymakers to consider legislation to “compete” with other states, and highlight the ways in which the proposed policy can meet the existing needs of the state. In other words: these individuals “serve as the conduits for innovation diffusion” (p. 45).

In his examination of school choice legislation in the United States, Mintrom found that policy entrepreneurs provided data from other states and localities to policymakers to encourage the adoption of school choice policies. In a few cases, policy entrepreneurs were so interested in the topic that they invested their own funds

into a private voucher system, when efforts to pass legislation stalled. These privately funded programs provided learning opportunities for state policymakers as they could see what such a system would like if enacted on a broader scale. In regions of the country where strong policy entrepreneurship was present, school choice was more likely to be adopted.

Koski (2010) explained how policy entrepreneurs play an important role in the diffusion of low-salience policies. He examined the adoption of U.S. Green Building Council's Leadership in Energy Efficient Design (LEED) standards in American cities. Policy advocates emerge as "knowledge brokers" who provide data and expertise to policymakers. Koski suggested that policy entrepreneurs (or advocates, as he calls them) are one of three components that diffuse ideas about policies to different localities, the other two being popular support and professional networks (p. 95). He explained that it can be difficult to get low-salience items on the agenda, particularly if they are technically complex, or otherwise difficult for the average citizen to understand. Connecting low-salience ideas with high-salience issues (i.e., green building to environmentalism) is one way that policy advocates help build interest in the idea. Policy advocates help connect academic or technical professionals and information to researchers, by way of a "policy kernel" (p. 97) that helps policymakers understand, articulate and solve an existing problem (in this case, the LEED standards). They can also help connect adopting jurisdictions to others, so that states and localities can learn from each other.

Grinstein-Weiss, Edwards, Charles and Wagner (2009) found in their study of Individual Development Accounts (IDAs) that regional, vertical and national interaction diffusion models, as well as policy entrepreneurs all played a role in the adoption of IDAs. The internal determinants of states did not seem to be significantly related to policy adoption. Policy entrepreneurs played an important role in generating knowledge and ideas during the early stages of adoption. After the first few states adopted IDAs, other states could then learn from their experiences. National and professional organizations connected policymakers across states, and helped spread information and resources. Finally, federal financial incentives helped encourage state adoption at the later stages. Their study illuminates how different diffusion processes may occur at different stages of state policy adoption.

Allen, Pettus, & Haider-Markel (2004) in their examination of three types of policies (truth-in-sentencing laws, partial-birth abortion bans, and hate crimes legislation) showed that the federal government can have a significant influence on states' decisions to adopt policies. In the first case, the federal government offered states funding for prison construction if they passed truth-in-sentencing laws. Even after controlling for other variables, this incentive was significantly related to the adoption of such laws across the country. In other cases, inaction from the federal government can also influence states to act. In the 1990s, when it became clear that the federal government would not be able to pass legislation to ban partial-birth abortions, a number of states acted on their own accord. However, in the case of hate crime legislation, although the federal government showed leadership in enacting hate

crimes legislation, the authors found that regional diffusion patterns were more significant predictors of diffusion than the influence of the federal government.

### **Theoretical Framework**

A review of the literature related to justice reinvestment outlined in this chapter suggests that the work of the national organizations involved in the Justice Reinvestment Initiative, combined with the financial incentives and support of the federal Bureau of Justice Assistance, are likely to have had the most significant impact on the diffusion of justice reinvestment to state policymakers. Yet, as noted above, adoption of justice reinvestment approaches may not have been likely without a “window of opportunity” for reform (Kingdon, 1984). As such, the research question that guides this research attempts to better understand the determinants of adoption within the American states that may have influenced the adoption of justice reinvestment.

*RQ1: What are the determinants of the adoption of justice reinvestment as a policy process in the states?*

The internal characteristics of states, as laid out by Berry and Berry (1999, summarized below), provides a framework for understanding what types of factors may have influenced policymakers’ decision to adopt justice reinvestment.

### The “unified model” of policy adoption and diffusion

As explained previously in this chapter, Berry and Berry (1999) noted that prior to the 1990s studies of policy adoption generally took one of two approaches. The first approach suggests that policies were adopted by states due to a diffusion process from one state to another—that is, state policymakers were cognizant of how policies were adopted in other states and within the federal government, and adopted policies based on the actions of other states and/or the federal government. The second approach suggests that states are primarily motivated to adopt policies because of the internal characteristics within the state (e.g., the severity of the problem, electoral concerns, resources available, etc.). Berry and Berry suggested that attempts to study policy adoption using only one approach are unsatisfactory, because evidence suggests that it is likely that both diffusion processes and the internal characteristics of states influence the adoption of policy within a state. For this reason, they proposed a “unified model” of policy adoption and diffusion that incorporates variables that measures both diffusion variables, as well as internal characteristics of states (p. 237).

Berry and Berry drew on Mohr’s 1969 analysis of organizational innovation as theoretical grounding for their model. In a 1990 study of state lottery adoptions by Berry and Berry, they expanded on Mohr’s work. They explained: “Mohr argues persuasively that the probability of innovation is inversely related to the strength of the obstacles to innovation and directly related to (1) the motivation to innovate, and (2) the availability of resources for overcoming obstacles” (p. 399). The variables

recommended by Berry and Berry are drawn from Mohr's work, as well as from their review of the policy diffusion and adoption literatures.

### **Internal Determinants of Adoption**

#### **Motivation - Severity of the problem**

Berry and Berry argued that the "problem severity" within a state influences the adoption of a policy (1999, p. 235). For this study, four variables were considered which may contribute to the problem environment and lead state policymakers into consideration of justice reinvestment as a policy innovation. The first is a measure of the operational prison capacity of each state. As a state approaches or exceeds its capacity, the likelihood of costly prison expansion or construction increases. Legal action can also occur when states are operating prisons above capacity; in the past decade California was mandated by federal court order—later upheld by the United States Supreme Court—to release over 30,000 inmates from its prison system due to unconstitutional living arrangements in California's crowded prisons (Liptak, 2011).

Second, states with high imprisonment rates may also be more willing to consider justice reinvestment than states with low imprisonment rates. As noted by scholars of policy innovation, as early as Walker (1969), states may adopt policy innovations due to the desire to conform to national standards or to regional norms. Third, increased imprisonment rates may also be correlated with increased correctional expenditures, and greater strain on state budgets, although other factors beyond



population counts can drive expenditures (aging prisoners, labor costs, programs in prisons, new construction, etc.).

Finally, states experiencing fiscal stress may be willing to consider justice reinvestment as a means to downsize correctional spending, particularly if they are precariously close to prison construction or expansion, or if justice expenditures make up a higher than average proportion of their state budget, than other states. Indeed, budget constraints are one of the most cited reasons why states adopted justice reinvestment according to Justice Center individual state reports (Council of State Government, Justice Center, n.d.)<sup>10</sup>. Federal funding through the Bureau of Justice Assistance may provide a strong incentive to cash-strapped states to adopt the Justice Reinvestment Initiative approaches.

#### Availability of resources

Justice reinvestment is a time intensive process of high complexity. The initial stage involves fairly extensive data collection. In most cases, states have received technical assistance from one of the above listed outside organizations, as well as financial assistance from the BJA, or national foundations that support criminal justice programs, such as the Pew Charitable Trusts. In some states, legislators are employed as full-time salaried workers and have staff, data, and other resources at hand to assist

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<sup>10</sup> See Appendix 1.

in the crafting of policy. In other states, the legislature meets for only a portion of the year, and the resources available to legislatures are quite limited. Squire (1992) suggested that the professionalism of state legislatures can be measured by the similarities that they have with the United States Congress, (e.g., features such as staff, data collection, research capabilities, health benefits). Berry and Berry (1999) noted that many studies of policy adoption take into consideration the professionalism of state legislatures, and these studies have found that greater professionalism is associated with the adoption of innovative policies. It is hypothesized that greater legislative professionalism will be correlated with the adoption of Justice Reinvestment Initiative within a state because of the time and resource intensive nature of initiating, and going through, the process.

Walker (1969) speculated that some states are more innovative than other states, and therefore more likely to adopt policy innovations than others. He created an innovation score for each state based on the number of innovative policies they had adopted between 1870 to 1965. Boehmke and Skinner (2012a) updated Walker's innovation scores, using both the policies he considered, as well as 101 other policies, up until 2009 (189 total). They employed event history analysis to study these policies, rather than use factor analysis, as Walker had used 40 years earlier, noting some of the criticisms leveled against Walker's initial analysis. They found that states with larger populations, per capita income and urbanization are more innovative. However, they also found that states with professional legislatures are less likely to innovate.

## **Diffusion Variables -- External Characteristics**

### **National interaction**

As Berry and Berry (1997) explained, researchers who have analyzed policy diffusion using the national interactions model “assume[s] a national communication network among state officials regarding public-sector programs in which officials learn about programs from their peers in other states” (p. 226). Clearly, the Council of State Governments serves as such a networking organization. The Council of State Governments Justice Center has been a primary source of information about the Justice Reinvestment Initiative over the past decade and a half, and has provided technical assistance and support to states interested in implementing it. Balla (2001) found that the Health Maintenance Organization Model Act was more likely to diffuse to states where the insurance commissioner within the state had served on the Accident and Health Insurance Committee of the National Association of Insurance Commissioners. Following Balla’s lead, it may be that states were more likely to adopt the Justice Reinvestment Initiative if governmental leaders within their states (policymakers, judges, members of state agencies) had served on the board of the Council of State Governments Justice Center.

### **Vertical influence**

Vertical influence relates to the influence of the federal government on the states. In the case of Justice Reinvestment Initiative, funding is provided through the

Bureau of Justice Assistance for Justice Reinvestment Initiative. Sliva's (2016) review of the criminal justice policy diffusion literature found that federal funding was an important determinant of state adoption of criminal justice policies across studies. Spelman (2009) provided an interesting perspective on the power of vertical influence in his analysis of the variables that drive incarceration rates in the American states. His analysis suggested that the primary reason states fill prisons is because they have the resources to do so. Often these resources are provided by the federal government, as in the case when the federal government offered states funding for prison construction and expansion in the mid-90s, with the condition that they pass Truth-in-Sentencing laws for serious offenses. Spelman suggested that if the federal government instead funded community-based correctional strategies, such strategies would likely be implemented by states. The resources provided by the Bureau of Justice Assistance, while limited, constitute such funding. In addition, the federal government, through the Bureau of Justice Assistance, and via taped testimony from former Attorney General Eric Holder for the 2010 National Summit on Justice Reinvestment and Public Safety, has shown strong support for Justice Reinvestment Initiative (Clement, Schwarzfeld, and Thompson, 2011). The Bureau of Justice Assistance also partners with the above mentioned organizations to provide technical support, information, and expertise to states interested in the Justice Reinvestment Initiative process.

## **Research statements**

Research hypotheses were crafted based on this theoretical framework and consider the research question proposed in Chapter One. Diffusion of Innovation Theory, provides the theoretical animation for the research. The review of the literature surrounding justice reinvestment suggests imprisonment rates, justice expenditures and prison capacity as the three primary justice-related variables that are most likely to influence the adoption of justice reinvestment in a state, as they are most closely tied to the budget concerns of states, the fourth variable included in this study. Much of the language surrounding justice reinvestment is focused on economic models, efficiency and cost-savings—it is a policy approach that is clearly aligned with economic concerns. As such, justice variables that are closely tied to state budgets are most likely to influence state adoption of justice reinvestment. Related to this reasoning, it is hypothesized that states with significant budget concerns that also have high imprisonment rates and/or prisons operating near or past capacity are most likely to adopt justice reinvestment approaches. Together, these four variables signify what Berry and Berry considered the “problem environment” of the state. Therefore, the following four hypotheses statements for this research study are as follows:

***Hypothesis 1: States with high incarceration rates are more likely to adopt justice reinvestment.***

***Hypothesis 2: States with high justice expenditures, as a percent of the state budget, are more likely to adopt justice reinvestment.***

***Hypothesis 3: States are more likely to adopt justice reinvestment approaches as they move closer to exceeding prison operational capacity.***

***Hypothesis 4: States with greater debt, as a proportion of total state revenue, are more likely to adopt justice reinvestment.***

Two variables capture the state's capacity to adopt justice reinvestment. As noted in the literature review, justice reinvestment is a policy innovation that differs in significant ways than many of the criminal justice policies that have been enacted over the past few decades. Studies have consistently shown that states that are more innovative are more likely to adopt policy innovations (Walker, 1969; Berry & Berry, 1997; Boehmke and Skinner, 2012a). Since the Justice Reinvestment Initiative involves a multi-step process that requires bi-partisan support, committee membership and long-term commitment, it is also hypothesized that states with a professional legislature are more likely to have the resources available (staff, research teams, offices, etc.) to commit to the Justice Reinvestment Initiative process. Therefore, the following hypotheses are suggested:

***Hypothesis 5: States that are more innovative will be more likely to adopt justice reinvestment.***

***Hypothesis 6: States with professional legislatures will be more likely to adopt justice reinvestment.***

Diffusion variables that represent national interactions and vertical influence which are likely to play a large role in state adoption of justice reinvestment

approaches are not included in this study due to data limitations outlined in the next chapter.

### Additional variables

In addition to the variables selected for statistical modeling based on Berry and Berry's (1999) model, a few other factors were also considered based on the criminal justice policy diffusion literature, as well as research on the factors that drive state incarceration rates (Bergin, 2011; Percival, 2012; Stemen, 2007; Spelman, 2009). Initially, thirty-two variables were considered for this research study, based on Berry and Berry's (1999) recommended list of variables, as well as published research that focuses extensively on criminal justice policy and correctional populations (Bergin, 2011; Percival, 2012; Stemen, 2007; Spelman, 2009).

Berry and Berry (1999) found that several researchers have found a correlation between the economic development of a state and the propensity to adopt innovative policies (see also: Walker, 1969; Boehmke & Skinner, 2012a). The review of the literature surrounding justice reinvestment suggests that the economic concerns of states are likely to be one of the most significant predictors of adoption. For example, Fox, Albertson, and Wong (2013) explained that while early justice reinvestment proponents stressed developing community capacity, among other more socially-driven goals, the justice reinvestment efforts that have passed have been strongly tied to economic considerations, and have borrowed deeply from tools developed by

economists to set policy recommendations (e.g., Cost-Benefit Analysis). In addition, in some states, prison construction may be touted as a means towards economic development, particularly in rural areas (Hoyman & Weinberg, 2006). Similarly, the closing or downsizing of prisons (as touted within the JRI literature) may be seen as threatening to certain embedded interest groups that provide services to prison industries (Ismaili, 2006; Tonry, 2011).

Either a rise *or* decline in crime rates may contribute to the severity of the problem and lead states to consider the JRI. In the first case, if crime rates continued to climb in tandem with ever-increasing prison populations, then policymakers may consider the status quo as ineffective, and embrace alternative strategies to manage crime control. This has been one of the major arguments from the criminology community: that prison rates have grown exponentially over the past four decades, during times of rising and falling crime rates, and therefore, the effectiveness of increased incarceration is limited, at best (Clear, 2007; Paternoster, 2010; Spelman, 2009). In the second case, if crime and victimization rates are declining in a state, the public may be more willing to consider rehabilitative and community-based approaches to crime control, in lieu of “tough on crime” approaches. A consideration of property and crime rates may influence decisions about the adoption justice reinvestment.

As noted by several authors (Balla, 2001; Berry & Berry, 1999; Grossback, Nicholson-Crotty & Peterson, 2004) the majority of studies on policy diffusion study regional diffusion. Berry and Berry summarized the three reasons most cited for



regional diffusion: (1) states learn from the experiences of their neighbors, (2) states compete with their neighbors for resources, and, (3) and, states may feel pressure to keep up with the standards and practices of neighboring state. Regional diffusion can be measured by determining whether a policy has already been adopted by a state that shares a border with the state in question. Alternatively, scholars can study regional diffusion by broader regions, such as those utilized by the U.S. Census Bureau. Some scholars may choose to study both neighboring states and regional states. There are weaknesses to both approaches, as some states may be influenced greatly by states that do not share a border, but are in the same region (such as New England). Regional models, on the other hand suggest that states that share borders but are located in different regions do not have an influence on each other (Berry & Berry, 1999).

This chapter defines justice reinvestment, provides an historical, social, and political overview of the criminal justice trends that led to the creation of justice reinvestment as a concept, summarizes some of the prominent voices that have examined justice reinvestment, gives a brief summary of the policy diffusion literature relevant to this research study, and finally outlines a number of variables that may explain the diffusion and adoption of justice reinvestment in the American states over the past decade and a half. A multitude of voices have questioned the current punitive nature of the American criminal justice system, and have called for its reform. Justice reinvestment has been trumpeted as a means to see meaningful reform. Nationally prominent organizations and the federal Department of Justice see great promise in the application of justice reinvestment strategies in the United States. In just over fifteen

years, a majority of American states have implemented justice reinvestment strategies, or are in the process of doing so. While it is too soon to know if justice reinvestment will have a long-lasting impact on the United States' use of incarceration, the process by which this innovative idea was diffused to the American states, and adopted by state policymakers, is worthy of examination. The intent of this research is to help illuminate that process.

### **Chapter 3**

## **METHODOLOGY**

This research consists of a multivariate statistical model of the diffusion of justice reinvestment policies in the American states. The subjects are state governments in the United States. The study uses administrative data combined with secondary analysis of survey research. Analysis is accomplished with a generalized linear model. The theoretical model adapts Berry and Berry's (1999) approach to present realities. Their work examined both the characteristics of states that may contribute to policy adoption, as well as diffusion variables that may influence the spread of innovative policy ideas from state to state. Their model provides the basic structure for the variables that have been selected for consideration in this research project. An initial list of thirty-two variables that may be related to the diffusion and adoption of justice reinvestment was narrowed down to eight variables.

This research employs logistic regression to determine what explanatory variables (independent variables) best predict states' likelihood to adopt justice reinvestment (the dependent variable).<sup>11</sup> This study uses a combination of cross-

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<sup>11</sup> While event history is often used in studies of policy adoption and diffusion, it is not the method best suited for this study. Since the publication of Berry and Berry's first article that outlined the use of event history analysis to study policy diffusion and

sectional data for the independent variables at two points in time, with longitudinal data that represents the adoption of justice reinvestment, which occurred over the course of fifteen years. This approach was used because the time period under examination is quite short, and it is less likely that variables will experience major changes from year to year. In comparison, most studies of policy diffusion and adoption analyze state adoption over several decades. In these cases, employing models that can account for time lags is more important. As Karch (2007) noted, the majority of policy diffusion studies focus on how states learn from one another (through processes he identifies as imitation, emulation, and competition). In these cases, a time-series analysis is also needed because evidence is needed to show how one state influences the next from year to year. This study does not examine whether states makes decisions to adopt the Justice Reinvestment Initiative based on other states in the ways that are traditionally outlined by policy diffusion scholars. Rather, it is hypothesized that state learning comes primarily through the Council of State Governments, which acts as a vehicle for state networking, interaction and learning. Finally, an initial exploration of using data for multiple years demonstrated that there were significant missing data in some of the key variables chosen for this study after 2007 (state innovativeness scores, professionalism of the legislature, and prison capacity scores).

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adoption in 1990, many alternative approaches to the study of policy diffusion are now available that take advantage of progress in statistical and methodological science.

Regression diagnostics were performed to determine whether the model met underlying assumptions required for a direct entry logistic regression (Tabachnick & Fidell, 2007). Examinations for multicollinearity were satisfactory, and correlations are outlined below. Univariate outliers were identified by examining the standardized values of each variables as z-scores. Four outlier states had z-scores greater than 3.30 in both the 2003 and 2007 datasets for the final variables that were selected for the logistic regression model. Tabachnick & Fidell (2007) suggested that z-scores above 3.30 are outside the normal distribution of values. California was an outlier for professionalism of the state legislature for both years, Maine was an outlier for state innovation scores in 2007, Michigan was an outlier for justice expenditures for both years, and Alaska was an outlier for the measure used for state fiscal stress for both years. Since the final model did not include the measure of state fiscal stress, Alaska was included in the final analyses, while the other states were deleted.

The 2003 model includes 47 cases, as the three above-noted outlier states were dropped from the analysis. The 2007 dataset had a total of 41 cases. The removal of nine states from this analysis is due to the removal of six states that adopted justice reinvestment prior to 2007, as well as the three outlier states. Thirty-two states adopted justice reinvestment in this dataset, and nine states did not adopt. A general guideline for identifying the number of predictor variables for a logistic regression suggests that for each predictor variable there should be ten events, although there is some indication that these rules may be overly conservative (Vittinghoff, & McCulloch, 2007). For this reason, the decision was made to reduce the original six predictor

variables, down to three variables, to provide a more robust statistical model of state adoption. The final grouping of variables includes: justice expenditures, as a proportion of state's general fund budget, professionalism of legislature, and the state innovativeness score. The justice expenditures variable touches all aspects of the "problem environment" within the state hypothesized as having an impact on state adoption—state budget concerns combined with concerns about costly growth in incarceration.

### Operationalization of Variables

In this research, the dependent variable is predicted by eight independent variables that are hypothesized as being most likely to predict a state's adoption of justice reinvestment, as well as four other variables that can be considered control variables. The first eight variables include: imprisonment rate by state; whether a state is at risk of or is currently operating prisons over capacity; the per capita justice expenditures by state; state debt as a proportion of total state revenue; the state innovativeness score; and, the professionalism of state legislature score. The control variables include: state gross domestic product, property crime rates, violent crime rates, and region of the country.

Dependent Variable: Adoption of Justice Reinvestment Initiative was coded as a dummy variable (yes = 0, no = 1). For the purpose of this research, a state is coded as having adopted justice reinvestment if they meet these three conditions: 1) A

working group or commission has been formed (generally this occurs through an executive order or legislative resolution); 2) the phrase “justice reinvestment” is used in documents; and 3) the state made a request for technical and/or financial assistance from one or more of the Justice Reinvestment Initiative partner organizations.

Adoption of the Justice Reinvestment Initiative is not dependent on the successful passage of criminal justice reform legislation, although all states that have gone through the process have passed legislative reforms, with the exception of those states actively engaged in the Justice Reinvestment Initiative process at this time, who have not yet set their policy priorities.

The initial research design included two independent variables that represent the policy diffusion process. The first was a measure of national interaction, with the Council of State Governments Justice Center serving as the mode of communication for states.<sup>12</sup> After gaining a better understanding of the history and structure of the Justice Center, the decision was made to not include this diffusion variable. Prior to the creation of the Justice Center, the Council of State Government’s Eastern Regional Conference played a key role in state work around justice reinvestment. Policymakers from states that participated in the Criminal Justice Committee of the Eastern Regional

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<sup>12</sup> Balla’s (2001) analysis found that the Health Maintenance Organization Model Act was more likely to diffuse to states where the insurance commissioner within the state had served on the Accident and Health Insurance Committee of the National Association of Insurance Commissioners. Following Balla’s lead, it may be that states were more likely to adopt the Justice Reinvestment Initiative if governmental leaders within their states (policymakers, judges, members of state agencies) had served on the board of the Council of State Governments Justice Center.

Conference may have had the opportunity to learn about justice reinvestment within that committee, but that involvement was likely different in substance and commitment than membership on the Board of the Justice Center. Excluding cases of involvement with the Eastern Regional Conference committee, however, may not be accurate because the Justice Center grew out of the work of this committee, and therefore there was likely an overlap between the work of the committee and the Justice Center during the transition period. An additional complication about using Board membership was that, in many cases, membership on the Board seems to have occurred after state adoption, rather than prior to adoption, and the Board rosters reflect two-year time commitments, which may also complicate understanding of Board membership and any relation to state adoption<sup>13</sup>.

The second diffusion variable initially selected for this study was federal funding. However, all states have the same access to the funding provided by the BJA for the Justice Reinvestment Initiative, and it became clear that it would not be informative to create a separate variable for funding. Instead data were analyzed at two separate data points, 2003 and 2007. Despite the fact that the first state to adopt Justice Reinvestment approaches was Connecticut in 2004, this analysis begins with 2003 as the starting point for analysis, as this was the year the original monograph, published by the Open Society Institute (Tucker & Cadora, 2003), first put forth the

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<sup>13</sup> The Justice Center generously provided information about Board membership upon request for this study.



concept of justice reinvestment. 2003 is also an appropriate beginning point for analysis as it accounts for a time lag between the idea's conception and first adoption (Balla, 2001). 2006 was the first year that federal funds were allocated to the Justice Reinvestment Initiative, and 2007 marks the beginning of the Justice Center. While initial federal funding for Justice Reinvestment Initiative was modest, and Justice Reinvestment Initiative was not funded at robust levels until 2010, when the Justice Reinvestment Initiative was formalized through Congressional appropriations, 2007 does signify the beginning of the public-private partnership between the Council of State Governments Justice Center, Pew Charitable Trusts and the U.S. Bureau of Justice Assistance. To capture both of these events (formation of the Justice Center and federal funding), a decision was made to also review 2007 data. Analysis of 2003 data and 2007 provides an opportunity to examine whether there was any difference in the significance of the model before and after the formalization of the Justice Center and allocation of funding from the Bureau of Justice Assistance.

The variable measuring the capacity of state prisons can be found in the United States Bureau of Justice Statistics' (BJS) annual reports on prisoners in state and federal institutions (Harrison & Beck, 2004; West & Sabol, 2008). Scores reflect the highest (operational capacity) scores listed. For the 2003 data, Connecticut did not provide data, but information about the approximate number of people who were incarcerated in Connecticut past the current capacity was found in a presentation prepared by the Council of State Governments Justice Center (2014), and matched with the approximate prison population count using the 2003 *Prisoners* report. For the

2007 data, capacity was estimated for two states that did not provide capacity scores. The number was derived based on their operational prison capacity and their listed prison population as of December 31, 2007, as noted in the *Prisoners* report. State imprisonment rates were also found within these reports.

The measure of state fiscal stress was obtained from the National Governors Association and the National Association of State Budget Officers (2004, 2008) annual *The Fiscal Survey of the States* reports. The measure used is the rainy day and ending balance as percent of total expenditures. The National Association of State Budget Officers was the source of an additional variable for this study. Their annual *State Expenditure Reports* (2003, 2007) includes a measure of justice expenditures, as a proportion of a state's general fund budget, which was used in this study.

The measure of professionalism of state legislatures was obtained through replication data from Squire (2017) on the University of North Carolina's Dataverse. State innovativeness scores were obtained through replication data found on the Harvard Dataverse site (Boehmke & Skinner, 2012). The biennial policy innovativeness scores were used in this study.

State violent and crime rates were obtained through the Federal Bureau of Identification's Uniform Crime Reports webpage. The crime rate is calculated as per 100,000. The final two variables were obtained through the Bureau of Economic Analysis website. The measure of gross domestic product that was used for this study is per capita real Gross Domestic Product, chained 2009 dollars. This is a measure that

shows the effect of inflation, and allows for comparison across years. Regional codes for states were also derived from this website.

## **Results**

All data was obtained from the indicated sources, coded and cleaned and combined into a dataset for analysis. Standard procedures were employed to manage the data and insure data quality.

### *Zero Order Correlations*

Correlational analyses were performed to examine the relationship between the adoption of justice reinvestment and the hypothesized predictor variables, which included: prison capacity rates, state imprisonment rates, justice expenditures as a percent of state budget, rainy day and ending balance as percent of total expenditures, professionalism of the legislature scores, and state innovativeness scores. In addition, four covariates were also assessed (property crime rates, violent crime rates, state Gross Domestic Product, and Bureau of Economic Analysis region). Zero ordered correlations were examined at both time periods under consideration, 2003 and 2007 (see Table 1 and Table 2).

Table 1. Correlation of dependent and control variables, 2003

	1	2	3	4	5	6	7	8	9	10	11
1. Adoption of justice reinvestment	1.00										
2. Prison capacity	-.188	1.00									
3. Imprisonment rate	.110	-.293*	1.00								
4. Justice expenditures	.144	-.206	.599**	1.00							
5. State fiscal stress	.117	.000	.004	.035	1.00						
6. Professionalism of the legislature	-.255	.496**	-.087	.026	-.026	1.00					
7. Innovativeness score	-.139	.088	.310*	.406**	-.150	.154	1.00				
8. Property crime rates	.130	-.055	.476**	.422**	.018	-.064	.361*	1.00			
9. Violent crime rates	-.106	.050	.516**	.308*	.196	.158	.486**	.538**	1.00		
10. State GDP	-.453**	.192	.159	.180	-.174	.635**	.458**	.032	.304*	1.00	
11. BEA Region	.102	-.258	.301*	.303*	.239	-.279	-.012	.619**	.115	-.219	1.00

\*\*Correlation is significant at the 0.01 level (2-tailed)

\*Correlation is significant at the 0.05 level (2-tailed)

N=47

Table 2. Correlation of dependent and control variables, 2007

	1	2	3	4	5	6	7	8	9	10	11
1. Adoption of justice reinvestment	1.00										
2. Prison capacity	-.050	1.00									
3. Imprisonment rate	.153	-.210	1.00								
4. Justice expenditures	-.011	.107	.219	1.00							
5. State fiscal stress	.187	.112	-.120	-.094	1.00						
6. Professionalism of the legislature	-.247	.387*	-.139	.150	-.508**	1.00					
7. Innovativeness score	-.408**	-.101	-.090	.035	-.164	.035	1.00				
8. Property crime rates	.189	-.337*	.436**	.138	-.032	-.085	.246	1.00			
9. Violent crime rates	-.055	-.172	.434**	.180	.108	.068	.226	.624**	1.00		
10. State GDP	-.248	.259	-.344*	-.223	.133	.227	.277	-.187	.052	1.00	
11. BEA Region	.163	-.252	.220	.051	.284	-.404**	.079	.430**	-.026	-.166	1.00

\*\*Correlation is significant at the 0.01 level (2-tailed)

\* Correlation is significant at the 0.05 level (2-tailed)

N=41

Several variables showed correlations across both time periods. The professionalism of the legislature score was correlated with prison capacity rates during both time periods (2003  $r=.496$ ,  $p=.001$ ; 2007,  $r=.387$ ,  $p=.012$ ). Property crime rates and violent crime rates correlate with each other during both time periods, and both of these variables also correlate with state imprisonment rates. Finally, Bureau of Economic Analysis regions also correlate with property crime rates across both time periods.

Focusing in on the two measures of state capacity to adopt, two variables, each at a different time period, were correlated with state adoption of justice reinvestment. In 2003, state gross domestic product had a negative correlation with state adoption of justice reinvestment ( $r = -.453$ ,  $p=.001$ ). In 2007, state innovativeness scores were also negatively correlated with state adoption of JRI ( $r = -.408$ ,  $p=.008$ ).

While some of the correlation coefficients were relatively large, none approached the level where multicollinearity was an issue. The next step was the construct of a generalized linear model to evaluate the relationship between the variables of interest.

### Regression Analysis

For the initial regression model, using 2003 data, 47 states were included in the model, with three outlier states (Michigan, California and Maine) omitted. In this dataset, thirty-eight states adopted justice reinvestment, and nine states did not adopt.

Table 3 outlines the descriptive statistics associated with this model. For ease of interpretation, the legislative professionalism scores and state innovativeness scores were multiplied by 100, an approach that Boehmke and Skinner (2012a) took with their own data during their analysis of internal determinants of state innovation across the United States.

Table 3. Descriptive Statistics for Variables Predicting State Adoption of Justice Reinvestment, 2003

Variable	Distributional Characteristics		
	<i>M</i>	<i>SD</i>	Range
Dependent Variable	0.81	0.398	1
State adoption of justice reinvestment			
Independent Variables			
Justice expenditures	6.755	1.824	8
Professionalism of the legislature	17.249	9.542	45.40
State innovativeness score	7.508	3.909	13.84

*Note:* *M* = mean, *SD* = standard deviation



The regression analysis was not statistically significant when compared to the constant-only model,  $\chi^2 (3, N=47) = 5.452$ ,  $p=.142$  (see Table 4). The Hosmer-Lemeshow goodness-of-fit test showed a good model fit ( $\chi^2=.11.476$ ), and the model showed improved predictive ability from the constant-only model (85.1% correct versus 80.9% percent correct). However, the model showed high sensitivity (100%), but low specificity (22%), and no variables within the model contributed significantly to the model.

Table 4. Regression Analysis Summary for Variables Predicting State Adoption of Justice Reinvestment, 2003

Predictor	<i>B</i>	Wald	<i>p</i>	Odds Ratio	95% CL for Odds Ratio	
					Lower	Upper
Justice expenditures	0.335	0.245	0.171	1.398	.866	2.259
Professionalism of the legislature	-.056	2.169	.141	0.994	. 874	1.019
State innovativeness scores	-.146	1.625	0.202	0.864	.690	1.082

*Note:* *B* = unstandardized coefficient, *N* = 47

The second regression, using data from 2007, was stronger than the first model. Six cases were dropped from the model due to prior adoption before 2007, and the three outlier states were also not included, leaving a total of 41 cases. In this dataset 32 states adopted justice reinvestment, and 9 states did not adopt. Descriptive statistics are provided in Table 5. As before, legislative professionalism scores and state innovativeness scores were multiplied by 100 for ease of analysis.

Table 5. Descriptive Statistics for Variables Predicting State Adoption of Justice Reinvestment, 2007

Variable	Distributional Characteristics		
	<i>M</i>	<i>SD</i>	Range
Dependent Variable			
State adoption of justice reinvestment	0.78	0.419	1
Independent Variables			
Justice expenditures	6.161	1.994	11.3
Professionalism of the legislature	17.505	10.168	45.40
State innovativeness score	10.118	5.741	22.30

*Note:* *M* = mean, *SD* = standard deviation, *N*=41

The full model containing all predictors was statistically significant  $\chi^2$  (3, N=41) = 9.107,  $p=.028$ , indicating that the model was able to distinguish between states that did adopt justice reinvestment and those that did not (see Table 4). The Hosmer-Lemeshow goodness-of-fit test showed a good model fit ( $\chi^2=6.502$ ). This model explained between 19.9% (Cox and Snell R square) and 30.6% (Nagelkerke R square) of the variance in state adoption of justice reinvestment, and correctly classified 78% of cases. This was the same prediction captured by the constant-only model, and therefore did not show improved predictive ability. As for the 2003 model, this model showed high sensitivity (93.8 %) but low specificity (22.2%). The positive predictive value of the mode was 81.1% and the negative predictive value was 50%. The casewise list showed that one case, Iowa, was predicted to have adopted justice reinvestment based on the model, but did not.

Table 6 shows the regression coefficients ( $B$ ), Wald statistics, significance levels, odds ratios, and 95% confidence limits for the odds ratio for each independent variable. The Wald test was significant for one variable. The strongest predictor of adoption was the state innovativeness score ( $p=.0190$ , recording an odds ratio of .837). This indicates that for each unit increase in state innovativeness scores, the odds of not adopting justice reinvestment increases by 16 percent. This finding, therefore, is an inverse of the relationship originally hypothesized—innovative states are less likely to adopt justice reinvestment, rather than more likely to adopt.

Table 6. Regression Analysis Summary for Variables Predicting State Adoption of Justice Reinvestment, 2007

Predictor	<i>B</i>	Wald	<i>p</i>	Odds Ratio	95% CL for Odds Ratio	
					Lower	Upper
Justice expenditures	0.013	0.003	0.955	1.013	.651	1.575
Professionalism of the legislature	-0.69	2.758	0.097	.933	.860	1.013
State innovativeness scores	-.178	5.479	0.019	.837	.721	.971

*Note:* *B* = unstandardized coefficient, *N* = 41

In addition to the variables considered in these models, additional variables were analyzed in various combinations to determine whether these other variables would influence the outcome of the analysis. These other variables include the other three predictors considered for the model, but ultimately dropped over concerns of over-fitting the model (imprisonment rates, prison capacity and rainy day and ending balance of state budgets). Covariates were also analyzed, which included: violent crime rates, property crime rates, state gross domestic product and Bureau of Economic Analysis region. Significance was not found with these other variables in the 2007 model. State gross domestic product was a significant predictor in the 2003 model with the unstandardized coefficient suggesting an inverse relationship between state gross domestic product and adoption of justice reinvestment; that is, states with greater gross domestic product are less likely to adopt justice reinvestment. The research supports that innovative states are also likely to be wealthy states (Boehmke & Skinner, 2012a), so these findings are compatible with the findings from the 2007 model.

## **Discussion**

This research investigated the research question: *What are the determinants of the adoption of justice reinvestment as a policy process in the states?* A theoretical model based on diffusion of innovation theory was proposed and several hypotheses were developed. These propositions were evaluated by a series of logistic regression models.

The results from these analyses supported the inclusion of state innovativeness scores within this study, although the 2007 model shows that the significance is opposite of what was predicted: states that were *less* innovative were more likely to adopt the Justice Reinvestment Initiative, rather than more likely to adopt it. The other research hypotheses outlined in this document were not met. The research question that drove this research aimed to identify the internal determinants of states that led to the adoption of justice reinvestment by states. This research suggests that variables that relate to problematic criminal justice trends, and other related concerns, within states, did not seem to be a primary determinant of states' decisions to adopt the Justice Reinvestment Initiative. This finding is in line with other research, including a systematic review by Sliva (2016) of the criminal justice policy literature, which found that the problem environment within states does not seem to drive the adoption of criminal justice policies. State adoption of justice reinvestment also seems to fit this pattern. This is a particularly interesting finding because a review of the state profiles available through the Council of State Governments, Pew Trusts, and the Urban Institute suggest that factors related to overburdened and expensive correctional systems were the primary drivers of state adoption of justice reinvestment. These include: increases in prison population, large numbers of revocations to prison from probation and parole, prisons near to or exceeding capacity, anticipated prison construction, high recidivism rates, high crime rates, lack of behavioral health services both in and out of prison, overwhelmed community corrections, and high state imprisonment rates. However, the use of some of these variables, in various



combinations, within regression models did not significantly predict adoption of justice reinvestment. These findings are supported by the fact that several of the states that did not adopt Justice Reinvestment Initiative also experienced overtaxed correctional systems within the time period under consideration.

While the 2007 model shows strong positive predictive ability, it is limited by its small number of cases. However, as the cases represent the parameters of the population rather than a sample, this model may be stronger than models that attempt to predict with small sample sizes. Future research on the predictors of adoption of justice reinvestment may reach different conclusions if the following variables are considered: probation and parole rates, state recidivism rates, and a measure of substance use disorder treatment program availability within the states—although it may be challenging to find cross-state comparison rates for the latter two predictors due to differences in definitions across jurisdictions. These are all variables that were noted consistently within the state profiles provided on the Justice Reinvestment Initiative partners' websites as contributing to states' reasons for adopting Justice Reinvestment Initiative. In addition, variables related to social justice concerns may also be of interest. Because states with high innovativeness scores tend to be more politically liberal (Boehmke & Skinner, 2012a), it may be that policymakers within states that did not adopt the Justice Reinvestment Initiative did not support the initiative because they found it too conservative in its design and limited in its scope. Finally, time-series analyses may also provide additional insights as the length of time increases from the time of first adoption.

The results from these analyses did not support the hypothesis statements outlined in this document. High incarceration rates (Hypothesis 1) and prison capacity rates (Hypothesis 2) were not examined in the final model included in this paper. However, they were not found to have any correlation with the adoption of the Justice Reinvestment Initiative, as shown in the correlation matrices for both 2003 and 2007, and were not found to be significant when included in various logistic regression models. The models used in this study suggest justice expenditures, as a percent of state budgets, did not significantly predict adoption of the Justice Reinvestment Initiative (Hypothesis 3). State debt, as measured by rainy day and ending balance as percent of total expenditures (Hypothesis 4), was also not included in the final models, but was not found to be a significant predictor when used in other logistic models, and did not correlate with the adoption of Justice Reinvestment Initiative. State innovativeness scores were found to be significantly related to the adoption of the Justice Reinvestment Initiative, although the 2007 model showed a significant inverse relationship to what was originally hypothesized (Hypothesis 5). Finally, the professionalism of the state legislature did not predict adoption of the Justice Reinvestment Initiative (Hypothesis 6).

There are some potential data limitations within this study. Many of these issues are faced by any type of analysis using administrative data or secondary analysis. Some sources may have unknown errors and research that is collected for one purpose is not always directly appropriate for another purpose. In addition, the variables used in this study are drawn from different levels of measurement, which

may influence results. Identification of the year states adopted justice reinvestment was challenging as different sources occasionally provided different start years. In these cases, efforts were made to check legislative records and media reports for accuracy, but it may be that the adoption dates within this document do not match figures provided by different sources.

Interviews or surveys of state policymakers that were instrumental in bringing the Justice Reinvestment Initiative to their state may be of interest to scholars interested in pursuing this topic in the future. Very few existing resources provide information about why states chose the Justice Reinvestment Initiative as the policy process to create criminal justice reforms, rather than pursuing reforms through the use of local resources and knowledge, so this may be a fruitful area of research. In addition, a greater understanding of how policy processes or packages diffuse, rather than single policies, should be of interest to policy diffusion researchers, as this is an aspect of policy diffusion that has not been greatly discussed in the literature.

## **Chapter 4**

### **CONCLUSION**

The goal of this research was to gain a better understanding of the reasons that states adopted justice reinvestment approaches, specifically through the route of the Justice Reinvestment Initiative. The results of modeling predictors on a logistic regression model show that states that do not score high in innovation are more likely to adopt the Justice Reinvestment Initiative<sup>14</sup>. Walker (1969) and Boehmke and Skinner (2012a) defined innovative states as states that generally adopt policies before other states. They tend to be leaders in policy adoption. California, for example, has consistently been a state that has initiated or been an early adopter of policies, and thus defined as an innovative state. This study found that based on data from 2007, states that have higher innovativeness scores were less likely to adopt the Justice Reinvestment Initiative.<sup>15</sup>

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<sup>14</sup> The states that did not adopt the Justice Reinvestment Initiative are the following: California, New Jersey, Virginia, Illinois, Colorado, Minnesota, Iowa, Florida, New York, and Tennessee.

<sup>15</sup> The 2007 analysis excludes three states, two of which were outliers for innovativeness scores. California has a very high innovativeness score, but did not adopt Justice Reinvestment Initiative, Maine has a low innovativeness score, but it did adopt – although it was late to do so, initiating the Justice Reinvestment Initiative in 2019. Michigan was also excluded due to high justice expenditures as a proportion of the state budget. It also adopted Justice Reinvestment Initiative, and has innovativeness scores close to the mean in 2007.

Boehmke and Skinner's (2012a) analyses of the internal determinants of innovative states found that innovative states are wealthier, have higher rates of urbanization, are more populated, and more likely to be politically liberal. Taken together, one might assume that these characteristics would make a state *more* likely to adopt criminal justice reforms – and, in fact, many of these states did adopt significant criminal justice reforms during the past two decades—they just did so without the assistance of the Justice Reinvestment Initiative. For example, during this time New York rolled back a number of the Rockefeller drug laws, including removing many mandatory minimum drug sentencing laws in 2009.

Wealthier states, with increased urbanization, may have greater capacity to address criminal justice concerns within their own states, without having to seek out technical assistance and resources from the federal Justice Reinvestment Initiative partners. Large urban centers, for example, may have universities, community-based organizations or advocacy organizations that are already working in the field of criminal justice. Policy entrepreneurs focusing on criminal justice reform may already exist within these states with the ability to offer technical expertise and innovative ideas to policymakers.

Less innovative states, that by definition have less experience adopting innovative policies, may find the technical assistance providers affiliated with the Justice Reinvestment Initiative as invaluable partners as they craft policy. These technical assistance providers bring a range of resources and expertise to states through the Justice Reinvestment Initiative process, including: data analysis, changes

to systems and practices (e.g., creating, refining or updating data management systems and data collection practices), and information about evidence-based programs and best practices. Perhaps the most important resource that is provided through the Justice Reinvestment Initiative is a politically palatable process for reform. Mooney and Lee (2001) provided an analysis of the ways in which morality politics can be “demoralized” through policies and political processes that are incremental, low in public salience, and high in technical complexity. By framing criminal justice reform with the language of “smart on crime” and “evidence-based policymaking” the Justice Reinvestment Initiative removes much of the morality-based language that is often associated with criminal justice policies.

### **Incremental approaches and the desire for broad social change**

Yet, it is just this removal of moral concerns from the discussion of criminal justice reform strategies that frustrates many of the critics of the Justice Reinvestment Initiative—a focus on costs and benefits without acknowledging the social justice concerns that are associated with mass incarceration, leads to policy reforms that make only incremental change. In this view, the Justice Reinvestment Initiative aimed too low and the policies passed as a result of the Justice Reinvestment Initiative will not achieve meaningful reductions in prison populations (Maruna, 2011, Austin, 2011, Tonry, 2011, Gottschalk, 2015). In a critique of Justice Reinvestment Initiative in 2013, prominent criminologists –some of whom played an instrumental role in the

early years of justice reinvestment— noted that what is needed in this country is a broad social movement that addresses the need for wide reaching reforms that can make a meaningful difference in the incarceration rate in this country (Austin et al., 2013).

Arguments against justice reinvestment approaches, and other “technocratic” reform efforts are summed up by Gottschalk (2015):

A penal reform agenda delineated primarily by evidence-based research about “what works” will inevitably yield an agenda that is highly constrained and politically vulnerable. “What works” has a poor track record when it comes to engineering important shifts not just in penal policy, but all kinds of public policy. In fact, a major preoccupation of scholars of public policy is seeking to explain why good scientific evidence often loses out in the contest against bad public policy. Just look at the tragedy of climate change. The fixation on emphasizing technocratic, expert-driven solutions to the problem of the carceral state denies the fundamental role that politics, emotion, and culture play in meting out punishment and in defining good and bad penal policy (p. 261).

Gottschalk noted the need for system-wide, systematic change that includes federal, state and local actors. Not only will this involve major changes in correctional and sentencing policy (reducing sentences, enhancing oversight of correctional facilities, reducing) but will also require those with significant front-line discretion (prosecutors, parole officers, judges, police officers) to prioritize a significant reduction in the

carceral state. However, a weakness of her argument is that she does not provide great detail about the process by which to foster this shared goal to key stakeholders within the criminal justice system.

Other examples of reforms provided by these, and other scholars concerned with the state of incarceration in the US, include sentencing reforms, such as the elimination of mandatory minimum sentencing laws, changes in penal code – particularly for violent offenders, changes in drug policy (including legalization or decriminalization), and increased police and prosecutor accountability, such as monitoring for racial disparities in arrest and sentencing, and mandatory video monitoring during police-citizen interactions. In addition to these criminal justice targeted reforms, many criminologists suggest that broader systems change will need to occur in order to meaningfully reduce incarceration in the US including, but not limited to, investing in communities and schools, higher wages, a broader social safety net, and, investments in neighborhoods that have disproportionate numbers of people who have had contact with the criminal justice system.

Despite the desire to see a broad reform of the criminal justice system, with a significant decrease in prison populations, some criminologists note that rapid changes to criminal justice policy could lead to some unintended consequences. Weisberg and Petersilia (2010) noted that while the state of incarceration in the United States is excessive and brings untold harms to the many people touched by the correctional system, they also provide caution about efforts to quickly reduce prison populations



without careful consideration of policies and practices in place that may lead to net-widening effects and other intended consequences. They explain:

Earlier movements sometimes proved futile because investment in the logistics and the research basis for the alternative sanctions was often neglected, as if the moral attraction to alternative sanctions caused policy-makers and reformers to ignore the hard and expensive work the sanctions require (p. 127).

In short, they recommend that reform attempts must be coupled with careful analysis of any unintended consequences, noting, “If the hard work is not done, we may face another round of backfire, disillusionment, and susceptibility to political demagoguery” (p. 129).

### **Implementation and fidelity**

While the policies put in place through the Justice Reinvestment Initiative process may not have led to a significant reduction in prison populations within states, the work of the Justice Reinvestment Initiative provides considerable insight into some of the “hard work” that is involved in criminal justice reform policy-making. A review and analysis of the state profiles and evaluation reports provided by Pew, Urban Institute, and the Council of State Governments demonstrate the level of technical complexity that surrounds not only the passage of legislation, but also how these changes in policy impact administrative policy, inter-agency coordination, and data infrastructure systems. LaVigne et al. (2014), for example, noted that some states did

not have functioning data management systems prior to the adoption of Justice Reinvestment Initiative. Through the Justice Reinvestment Initiative, policies and resources were put into place to improve the ability for states to understand the scope, needs and gaps of their correctional systems. For these states, their readiness to implement evidence-based programs and criminal justice reforms may be far less than other states that have worked towards system improvements and policy reforms for some time.

Regardless of whether reform continues at an incremental pace, or occurs due to a broad social movement that leads to a rapid shift in policy, changes at the state and local level will be technically complex and require thinking about many moving parts (agencies, employees, unions, legal reforms, coordination between behavioral health, community corrections, local governments, etc.). Not all states have the capacity, ability and political coordination to institute broad-based reforms. So, if social movements effectively change criminal justice policy writ large (e.g., through federal policy changes, federal funding priorities, federal court orders, etc.) there will be incredible implementation concerns. Policy change will likely necessitate some level of technical assistance provision to state and local governments, as well as continual monitoring of policy implementation to ensure the intent of reforms are carried out correctly, and that evaluation of outcomes are ongoing.

The authors of the 2014 evaluation of Justice Reinvestment Initiative states (LaVigne, et al., 2014) noted that one of the major hurdles in the Justice Reinvestment Initiative process was implementation failures, which occurred for many reasons,

including: insufficient resources to support the sustainability of the programs, lack of implementer buy-in, insufficient training on required programs, and lack of clarity about roles and responsibilities.

Policies that require the implementation of evidence-based programs or practices, such as Risk Needs Assessments or increased use of problem-solving courts, will also likely require significant funding support, political will, evaluation of effectiveness, and monitoring of fidelity. This means that criminal justice reform cannot be a one and done deal – it requires substantial resources and support to maintain momentum towards meaningful change.

In addition, reform efforts will likely remain an iterative process, as what can be legislated in one session can be undone in another. A 2016 evaluation of the Justice Reinvestment Initiative by the Urban Institute provided two examples. Policies put in place in New Hampshire during the Justice Reinvestment Initiative process were undone by legislation that passed in a later legislative session, partly due to the politicization of the Justice Reinvestment Initiative reforms during the gubernatorial race of 2010. A high profile murder by a parolee in Arkansas also led to efforts to undo Justice Reinvestment Initiative legislation, with subsequent tightening of revocations to prison responses (Harvell et al., 2017). This tension is also seen in states that have instituted reforms, without the assistance of the Justice Reinvestment Initiative. Cash bail reforms passed in New York in 2019 are now hotly contested by interest groups within the state, who have organized a response against the reforms

that is so strong that former supporters of the initiative are now reconsidering their support (McKinley, Feuer, & Ferrẽ-Sadurni, 2019).

As noted by criminologists who study criminal justice policymaking—policymakers are highly susceptible to moral panics and high profile incidents when crafting criminal justice policy (see: Garland, 2002; Simon, 2007; Best, 1987). Therefore, criminal justice reform will likely remain an ongoing project, with various strategies to ensure that progress is sustained – from across sectors and by way of many channels—legal, academic, administrative and civic –to name a few. Regardless of the pace and scale of reform efforts that may occur over the next decade, there will continue to be a need for criminal justice policy analysts and policy-minded criminologists.

### **Policy innovation and policy entrepreneurship in criminal justice reform**

As noted throughout this document, prominent criminologists have voiced their frustration with the recent wave of criminal justice reforms, including but not limited to the Justice Reinvestment Initiative, and what they see as incremental and limited policymaking. However, these same criminologists do not do enough to illuminate the process by which broader reforms can be passed and implemented at the federal and state level. In many ways, the aspect of Justice Reinvestment that may be the most illuminating for future research and policy work within not only the criminal justice field, but in other fields where advocates have called for reform (e.g., educational reforms, environmental reforms), is that the innovation represented by the

Justice Reinvestment Initiative is the *process*, much more than the actual policies put forth. Given that there is a strong desire, as well as a great need, to keep the momentum around reform efforts ongoing, the process by which these reforms can be put on the legislative agenda at the state and federal level, requires significant attention.

At this moment in time, during this “window of opportunity” (Kingdon, 1984) when there remains openness to and bipartisan support of criminal justice reform, policy innovators and policy entrepreneurs that can improve this process by which reform can move through legislative bodies can play an incredible role in moving this wave of reform forward. The approach taken by those involved in the Justice Reinvestment Approach provided one model for criminal justice reform. Through this process four out of five states made significant reforms to their criminal justice systems. However, considerable work remains to be done.

Some states (e.g., more innovative states) may have the resources to craft thoughtful, data-driven criminal justice policy. They may also have the leaders and innovators that can expand the reform process so that is more inclusive of multiple stakeholders and expands the reach of reform efforts. Other states may not have the resources, the capacity, the political will, or the readiness to implement such reforms. Therefore, organizations, such as the Council of State Governments, the Urban Institute, and Pew Center on the States, that can provide technical assistance and the opportunity for cross-state learning and collaboration, in coordination with federal resources, will likely continue to play an essential role in reform efforts at the state level.

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## Appendix A

### STATE ADOPTION OF JUSTICE REINVESTMENT INITIATIVE 2003-2019

Table A-1. State Adoption of Justice Reinvestment 2003-2019			
State	Date(s)	Reasons listed for adopting Justice Reinvestment	Primary partner(s)
Connecticut	2003	Increase in prison population. Prison capacity exceeded.	CSG
Texas	2006	Prison capacity exceeded, with future construction expected. High number of revocations to prisons for violations of probation (VOPs). Limited substance abuse and mental health treatment options.	BJA CSG Pew
Rhode Island	2006 2015	Increase in prison population. Community corrections overwhelmed. High recidivism rates. Limited substance abuse treatment options.	BJA CSG JFA
Kansas	2007 2012	Increase in prison population. Anticipated prison construction. Large number of technical violations of probation or parole. Need for drug treatment within correctional facilities	CSG Pew
Nevada	2007 2012 2018	Large projected growth of prison population. High number of revocations to prisons for VOPs. Limited community behavioral health.	BJA CSG JFA (2007) CJI (2018)
Vermont	2007 2019	Increase in prison population. Faced with more out of state placements or new construction. High number of revocations to prisons for VOPs. Need for substance abuse and mental health treatment services.	BJA CSG Pew
Arizona	2008	Increase in prison population. High number of revocations to prisons for VOPs. Concentrated incarceration in certain areas.	BJA CSG Pew
Michigan	2008 2013	Corrections expenditures large portion of state budget. High violent crime rates in comparison to rest of the country. High number of	BJA CSG Pew



		revocations to prisons for VOPs.	
Ohio	2008 2017	Increase in prison admissions and DOC budget expenditures. Prisons over capacity, with anticipated prison construction in future.	BJA CSG Pew
South Carolina	2008	Increased prison growth with increased corrections expenditures. High violent crime rates. High recidivism rates.	BJA Pew Vera
Wisconsin	2008	Increase in prison population and corrections expenditures. Anticipated prison construction. High number of revocations to prisons for VOPs.	BJA CSG Pew
New Hampshire	2009	Increase in prison population and correctional expenditures. High recidivism rates. High number of revocations to prisons for VOPs.	BJA CSG Pew
North Carolina	2009	Increase in prison population. Prisons over capacity. Construction and expansion required. High number of revocations to prisons for VOPs.	BJA CSG Pew
Arkansas	2010 2015	Expanding prison population, high crime and recidivism rates. High number of revocations to prisons for VOPs.	BJA (both) Pew (both) Vera (2010) CSG (2015)
Hawaii	2010	Heavy reliance on use of out-of-state prisons. Large number of people in pretrial detention.	BJA CSG Pew
Indiana	2010	Increase in prison populations. Projected prison construction with associated corrections expenditures.	BJA CSG Pew
Kentucky	2010 2017	Steep increase in prison populations.	Pew Vera (2010) CJI (2017)
Louisiana	2010 2015	Highest incarceration rate in nation. High recidivism rates.	Pew Vera (2010) CJI (2015)
Delaware	2011	Expanding costs for prisons. Prisons old and in need of repair; operating near or over capacity. Budget deficit in the state.	BJA Vera

Georgia	2011 2016	Increase in prison populations, which decreased after first round of reforms. Probation and incarceration rates are very high.	BJA Pew Vera (2011) CJI (2011) CSG (2016)
Missouri	2011 2017	Correctional spending projected to increase; already a large portion of state budget. High number of revocations to prisons for VOPs.	BJA Pew CSG (2017)
Oklahoma	2011 2015	Prisons past capacity. High violent crime rates. Insufficient community resources, including post-release supervision and mental health and substance abuse treatment.	BJA CSG Pew
Pennsylvania	2011 2015	Despite decreases in crime rates, increases in the population in prisons and jails. Community corrections overwhelmed.	BJA CSG Pew
Oregon	2012 2018	Projected prison population increase with associated tax costs (2012). Behavioral health needs of those in prison – Behavioral Health Justice Reinvestment (2018).	BJA Pew CSG (2018)
South Dakota	2012	Increased prison rates. High proportion of offenders in prison for nonviolent crimes. Large numbers of revocations to prison for VOPs.	CJI Pew Vera
West Virginia	2012	Increased crime rates, increased VOPS, state prisons past capacity, leading to overwhelmed jails.	BJA CSG Pew
Idaho	2013	High recidivism rates. Long sentences for nonviolent crimes. High imprisonment rates.	BJA CSG Pew
Mississippi	2013	Large growth in prison population during preceding decades, with associated high costs. Very high imprisonment rates.	CJI Pew
Alabama	2014	Prisons operating far past capacity. Corrections expenditures very high. High probation and parole caseloads.	BJA CSG Pew
Alaska	2014	Increase in prison population with projected growth and associated costs.	CJI Pew

Nebraska	2014	Prisons operating past capacity, with increased growth projected, despite decreases in crime and arrests.	BJA CSG Pew
Utah	2014	Increased growth in prison population over time, with high associated costs.	CJI Pew
Washington	2014	High property crime rates, with limited community supervision options. Prisons operating past capacity.	BJA CSG Pew
Maryland	2015	Despite declining crime rates, imprisonment rates remain high. High recidivism rates.	CJI Pew
Massachusetts	2015	Concerns about high recidivism rates.	BJA CSG Pew
Montana	2015	Prisons at capacity, with projected growth. Many jails also over capacity.	BJA CSG Pew
North Dakota	2015	Increase in the prison population as well as probation and parole. Infrastructure costs associated with expanding capacity.	BJA CSG Pew
New Mexico	2018	Increase in prison population, with projected increases. High crime rates.	BJA CSG Pew
Wyoming	2018	Prisons operating past capacity, with projected growth. Declines in state revenue. Large numbers of revocations to prison for VOPs.	BJA CSG Pew
Maine	2019	Increase in prison population, particularly for women. Large numbers of revocations to prison for VOPs. The opioid crisis has taken a toll on state resources.	BJA CSG Pew

Notes: Colorado and Illinois passed legislation that refer to a justice reinvestment process, but they did not do so through the Justice Reinvestment Initiative. Partners include: Bureau of Justice Assistance (BJA), Council of State Governments (CSG), Pew Charitable Trusts Public Safety Performance Project (Pew), JFA Institute (JFA), Crime and Justice Institute (CJI), Vera Institute of Justice (Vera). Data for this table came from the following sources: Council of State Governments Justice Center State

Profiles with additional information from white papers presented to state policymakers (all available on their website); State profiles available through the Pew Public Safety Performance Project website; information provided through the Urban Institute's Justice Reinvestment Initiative State Data Tracker; the National Conference of State Legislatures, Justice Reinvestment State Resources page; State profile reports from the Community Resource for Justice, Crime and Justice Institute; and, Vera Institute of Justice's Justice Reinvestment Initiative page.

## Appendix B

### CODEBOOK

Variables 2003 and 2007	Source and notes
<b>Dependent Variable</b>	
State adoption of Justice Reinvestment	<p>State adoption information available through the following sources:</p> <ul style="list-style-type: none"> <li>• Pew Public Safety Performance Project website;</li> <li>• The Urban Institute's Justice Reinvestment Initiative State Data Tracker;</li> <li>• The National Conference of State Legislatures, Justice Reinvestment State Resources page;</li> <li>• State profile reports from the Community Resource for Justice, Crime and Justice Institute; and,</li> <li>• Vera Institute of Justice's Justice Reinvestment Initiative page.</li> </ul>
<b>Independent Variables</b>	
<i>States' motivation for reform</i>	
Prison capacity	<p>U.S. Bureau of Justice Statistics –<i>Prisoners</i> series (Harrison &amp; Beck, 2004; West &amp; Sabol, 2008).</p> <p>Scores reflect the highest (operational capacity) scores listed. For the 2003 data, Connecticut did not provide data, but I was able to find this data from a presentation prepared by the Council of State Governments Justice Center (2014), and confirmed the approximate prison population count using the 2003 <i>Prisoners</i> report. For the 2007 data, I estimated capacity for two states that did not provide capacity scores. I arrived at the number based on their operational prison capacity and their listed prison population as of December 31, 2007.</p>
State imprisonment rate	U.S. Bureau of Justice Statistics - <i>Prisoners</i> series
Rainy day and ending balance as	National Governors Association & National Association of State Budget Officers (2004, 2008), <i>The Fiscal Survey of the</i>

percent of total expenditures	<i>States</i> , Table A-1: State General Fund, Actual (Millions).
Justice expenditures, as a proportion of state's general fund budget	NASBO, <i>State Expenditure Reports</i> , Corrections General Fund Expenditures as a Percent of Total General Fund Expenditures [Table].
<i>States' capacity to innovate</i>	
Professionalism of legislature	Squire, P. (2017). Replication data. UNC Dataverse.
State innovativeness score	Boehmke & Skinner (2012b) Replication data. Harvard Dataverse. I used the biennial policy innovativeness scores.
<b>Control Variables</b>	
<i>States' motivation for reform</i>	
Violent crime rates	Federal Bureau of Information. <i>Crime in the United States</i> . Information drawn from state tables on the Uniform Crime Report webpage. Crime rate is per 100,000.
Property crime rates	Federal Bureau of Information. <i>Crime in the United States</i> . Information drawn from state tables on the Uniform Crime Report webpage. Crime rate is per 100,000.
<i>States' capacity to innovate</i>	
Economic development of state	State Gross Domestic Product, Bureau of Economic Analysis (BEA). Per capita real GDP by state (chained 2009 dollars) [Table]
<i>Diffusion variable</i>	
Regional diffusion	BEA regions