

## EXECUTIVE SUMMARY

# Next Steps:

# An Agenda for Federal Action on Safety and Justice

*Independent Task Force Report | May 2020*

Crime rates in the United States have dropped substantially since their peak in the early 1990s, and, while remaining above historical norms, the nation's incarceration rate has receded as well. At the federal level, the FIRST STEP Act signed by President Trump and the Smart on Crime initiatives of the Obama Administration have helped bend the curve of imprisonment: after reaching a high of nearly 220,000 in 2013, the federal prison population now stands at 175,000, a drop of 20 percent.

Yet there is broad agreement across the political spectrum that more must be done to make communities safe and guarantee justice—not just by states and localities, where the majority of the criminal justice system operates, but also by the federal government, which runs the country's largest correctional system and helps set the tone of the national conversation.

Recognizing this growing thirst for strategies that work better and cost less, the Council on Criminal Justice (CCJ) dedicated its first independent task force to defining an agenda for action at the federal level. Through deliberations spanning the second half of 2019, the Task Force on Federal Priorities worked to craft a consensus view of the actionable, politically viable steps that the federal government can take now and in the near future to produce the greatest improvements in public safety and the administration of justice. Although the Task Force concluded its deliberations before the outbreak of COVID-19, several of the recommendations are highly relevant to the federal response, in the short term and beyond.

The Task Force was chaired by former congressman and Georgia Governor Nathan Deal and included a cross-section of stakeholders representing diverse professional and ideological perspectives: former federal prosecutors and defenders; a former mayor and a veteran police leader; experts in prisoner reentry, substance use, and victim rights; and advocates and formerly incarcerated people. Beyond their own experience, members drew on the expertise of well-known authorities in the public safety and health fields and the collective wisdom of some 200 innovators and influencers who provided feedback on draft recommendations at CCJ's Inaugural Leadership Summit in October 2019.

The Task Force deliberations produced consensus on multiple areas for action by the legislative, executive, and judicial branches—from reducing violence and trauma to sentencing, the functioning of federal prisons, opportunities for release, and support for successful reentry. Reflecting the commitment of Task Force members to bipartisan, data-driven solutions, all of the 15 recommendations are accompanied by a policy rationale, detailed implementation steps, and annotated citations summarizing the research and evidence that support them.

Taken together, the Task Force proposals provide a roadmap that Congress and the Administration can follow to accelerate our progress toward a justice system that is fair and effective for all Americans.

### 1 REINVIGORATE THE U.S. SENTENCING COMMISSION

The President and the Senate should fully reconstitute the U.S. Sentencing Commission so it can fulfill its statutory duties to make necessary and timely adjustments to the sentencing guidelines, make recommendations to Congress for needed changes to federal criminal and sentencing statutes, and conduct research on the policies and operation of the federal sentencing and corrections systems.

### 2 ELIMINATE MANDATORY MINIMUMS FOR DRUG CRIMES

Congress should eliminate mandatory minimum sentencing laws for all drug crimes and consider eliminating non-drug mandatory minimums while refraining from enacting any new mandatory minimums pending study.

### 3 STREAMLINE THE CRIMINAL CODE

The U.S. Sentencing Commission should undertake a comprehensive review of the U.S. Criminal Code, similar to the Base Realignment and Closure process, to identify unnecessary and duplicative federal criminal laws and those that lack appropriate and consistent mens rea elements and proportionate statutory sentencing ranges, and to gather all federal criminal laws into a single title of the U.S. Code organized in a way that is both useful to practitioners and understandable by the general public.

### 4 PROHIBIT ACQUITTED CONDUCT SENTENCING

The U.S. Sentencing Commission should amend the federal sentencing guidelines to preclude federal courts from considering acquitted conduct in determining the applicable sentencing guideline range.

### 5 CREATE WAIVERS FOR STATES WITH LEGAL MARIJUANA

Congress should adopt legislation directing the U.S. Departments of Justice and Health and Human Services to work with other federal agencies and state stakeholders to develop a federal waiver process or contractual framework for states that have legalized medical and/or recreational cannabis and for those states aiming to do the same.

### 6 TARGET HIGH-VIOLENCE CITIES WITH EVIDENCE-BASED STRATEGIES

Congress should fund a robust new grant program, to be administered by the U.S. Department of Justice in consultation with other federal agencies, to reduce violent victimization, trauma, and incarceration in the U.S. cities that are most affected by urban violence.

### 7 ENSURE SUFFICIENT FUNDING FOR CRIME VICTIMS

Congress should reform how it funds the Crime Victims Fund and ensure the fund's long-term solvency and meaningful impact for people in communities most affected by violent crime.

### 8 ESTABLISH OVERSIGHT OF THE BUREAU OF PRISONS

Congress should create an independent performance, oversight, and accountability board (Board) to oversee and advise the Bureau of Prisons. The Board shall be comprised of a broad cross-section of criminal justice stakeholders and shall possess the authority to review and assess all BOP policies, procedures, practices, and complaints, but have no operational authority.

### 9 RESTORE PELL GRANTS AND EXPAND EDUCATION IN PRISON

Federal agencies should provide individuals incarcerated in the federal system fully funded resources to complete evidence-based literacy, primary, and secondary education programming, and restore Pell Grants to provide justice-involved individuals access to continuing education, including vocational and post-secondary coursework.

### 10 ALLOW COURTS TO TAKE A SECOND LOOK AT SENTENCES

Congress should enact legislation that provides an opportunity for people serving federal criminal sentences to petition the sentencing court for modification of such sentences after 15 years, with eligibility for reapplication every 10 years thereafter.

### 11 SEAL LOWER-LEVEL CRIMINAL RECORDS FROM PUBLIC VIEW

Congress should pass legislation that automatically seals certain federal criminal and non-conviction records and should appropriate grant funding to help states adopt and implement clean slate laws.

### 12 FOCUS ACCOUNTABILITY COURTS ON HIGHER-RISK POPULATIONS

Congress should strengthen the public safety and rehabilitative impact of drug, mental health, veterans, and other problem-solving and accountability courts.

### 13 EXPAND PUBLIC HOUSING ACCESS FOR PEOPLE WITH CONVICTIONS

The Department of Housing and Urban Development should provide a steady level of funding for and expand access to safe, stable, and affordable housing for people with criminal records.

### 14 ENHANCE MEDICAID SUPPORT FOR EVIDENCE-BASED TREATMENT

Congress should support and incentivize increased access to residential and community-based treatment services that are evidence-based, including expanding access to Medication-Assisted Treatment, in order to strengthen reentry programs, prevent recidivism, and promote better health outcomes.

### 15 PROVIDE GUIDANCE ON CLOSING MEDICAID REENTRY GAPS

The Department of Health and Human Services should issue guidance on demonstration projects under Section 1115 of the Social Security Act to improve care transitions for soon-to-be formerly incarcerated persons who are otherwise eligible for Medicaid.

## About CCJ Task Forces

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Council on Criminal Justice Task Forces are independent of the Council and solely responsible for the content of their reports. Task Force topics are selected by Council leadership and meetings are facilitated by Council staff and consultants, but neither the Board of Directors nor Board of Trustees approves or disapproves the findings and recommendations.

Diverse in backgrounds and perspectives, Task Force members strive to reach consensus on findings and policy proposals through private, nonpartisan discussions. Members are asked to join a consensus signifying that they endorse the general policy thrust and judgments reached by the group, though not necessarily every finding and recommendation. Task Force members may append to the group report an additional or dissenting view if they wish. Members participate in Task Forces in their individual, not their institutional, capacities, and professional affiliations included in Task Force reports do not imply institutional endorsement.

### INDEPENDENT TASK FORCE ON FEDERAL PRIORITIES

The 14-member Task Force on Federal Priorities is the Council's first. It was convened from June 2019 through early March 2020 and was chaired by former Georgia Governor Nathan Deal. Prior to his two terms as governor, Deal served 18 years in Congress and was a Georgia state legislator, a criminal and juvenile judge, and a prosecutor

**Nathan Deal, Chair**

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*Former Justice Cabinet Secretary, Kentucky*

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*Former U.S. Deputy Attorney General*

## About the Council

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The Council on Criminal Justice is a nonpartisan criminal justice think tank and national invitational membership organization. Its mission is to advance understanding of the criminal justice policy choices facing the nation and build consensus for solutions based on facts, evidence, and fundamental principles of justice. For more information, visit [counciloncj.org](http://counciloncj.org) or contact us at [info@counciloncj.org](mailto:info@counciloncj.org).

To read the full Task Force report, including the implementation steps and supporting evidence for each recommendation, visit [counciloncj.org](http://counciloncj.org).

*The cover art for this project was created by adults in custody working at Oregon Corrections Enterprises, which partners with the Oregon Department of Corrections to promote public safety by providing adults in custody with work and training opportunities in a self-sustaining organization.*