

# SAFE RETURN:





North Carolina's Experience  
With Bringing People Home  
Early From Prison



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Southern Coalition for Social Justice, founded in 2007, partners with communities of color and economically disadvantaged communities in the South to defend and advance their political, social, and economic rights through the combination of legal advocacy, research, organizing, and communications.

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# INTRODUCTION

During the heights of the COVID-19 pandemic, North Carolina sent thousands of people home “early” from prison. Many of these individuals had their release dates moved up by days or months; others had their existing sentences cut by decades. Across the board, a massive number of prison years were avoided and millions of taxpayer dollars saved—with no negative impact on public safety. Further, these early releases allowed people to get an earlier head start on reconnecting with their families, friends, and communities.

In early 2021, the state of North Carolina and a number of civil rights organizations reached a landmark settlement in *North Carolina NAACP v. Cooper*, a lawsuit challenging the conditions of confinement in North Carolina’s state prisons that was filed as COVID-19 took hold across the nation. The settlement called for the unprecedented early reentry of at least 3,500 people held in North Carolina’s prisons—one of the largest prison releases resulting from COVID-19 litigation efforts.

Between February 25, 2021, and August 21, 2021, the North Carolina Department of Public Safety released approximately 4,450 people pursuant to the settlement.

By late July 2022, more than 13,400 people had been granted “early reentry” from prisons across North Carolina.

During that same approximate period of time, scores of people originally sentenced out of Durham County—many of whom were incarcerated with serious felonies—were released early (in some instances, decades early) from their prison sentences. Those releases took place after prosecutors and criminal defense attorneys thoroughly reviewed each case, reached agreement on the disposition, and presented each case to a Superior Court judge.

As part of its focus on reframing public safety, Southern Coalition for Social Justice took a closer look at these efforts and their outcomes to determine whether early reentry and prosecutorial “second look” approaches can and should be continued—and perhaps expanded in the future. After a close analysis of public records from the Department of Public Safety, Department of Adult Correction, and Durham County, the conclusion was that these measures—which saved hundreds of years of incarceration and potentially millions of dollars, and had no adverse effect on public safety—should be widely adopted and expanded.



# BACKGROUND: NORTH CAROLINA'S PRISON POPULATION

In 1970, the state and federal prison population hovered just below 200,000 people. North Carolina's prison population was 5,959. By 1985, the overall prison population nationwide had more than doubled to 481,616<sup>1</sup>.

At year-end 2019, the eve of the COVID-19 pandemic, over 1,430,165 people were incarcerated in state and federal prisons.<sup>2</sup> In North Carolina, that number was 34,079 people—an increase of 471% since 1970.<sup>3</sup>

The dramatic expansion in prison population, both in North Carolina and nationwide, cost taxpayers billions of dollars while offering little public safety benefit.<sup>4</sup> In 2010, the U.S. Department of Justice calculated that the then-existing operational costs of incarceration to state and federal budgets was \$80 billion.<sup>5</sup> That figure considerably underestimated the true cost of incarceration, however, which also includes the costs to incarcerated people, families, and communities.

In 2017, the Prison Policy Initiative found that incarceration costs the government and families of justice-involved people at least \$182 billion every year.<sup>6</sup>

Despite these massive costs, multiple studies have concluded that “[s]ince 2000, the effect of increasing incarceration on the crime rate has been essentially zero.”<sup>7</sup> While there is some debate about what factors **did** cause crime rates to fall over the past 50 years, there is no disagreement that, as incarceration grows, its impact on crime dramatically decreases.<sup>8</sup> We have long ago passed the point where increases in incarceration (*i.e.*, longer sentences) serve any measurable public safety purpose.

Studies show that the imprisonment of nearly 40 percent of the people in our correctional facilities offers “**no compelling public safety reason.**”<sup>9</sup>

Yet while legislators constantly seem to struggle to find enough funding to support critical social services, healthcare, and education, there is little hesitation to spend more on incarceration—as well as scant evaluation as to what that spending actually produces.



# COVID-19 IN PRISONS: NATIONWIDE RESPONSES

As the COVID-19 pandemic began to unfold in 2020, many jurisdictions across the nation took efforts to reduce prison populations, believed to be a necessary step to allow for social distancing and mitigate the worrisome health risks. Studies show that 35 jurisdictions (34 states and the federal prison system) adopted policies to accelerate prison releases during the COVID pandemic.<sup>10</sup> One analysis found that the number of people ultimately released was equivalent to approximately 5 1/2 percent of the total state and federal prison population in 2019 (the year before the pandemic).<sup>11</sup> The mechanisms and processes for granting some type of early release or prison population reduction varied across the nation. Parole, compassionate release, home confinement, commutation, or good time (or earned time) credits, were some of the more frequently employed tools.<sup>12</sup>

What led each jurisdiction to release people early from prison varied. In some states, gubernatorial leadership played a larger role.<sup>13</sup> In others, litigation forced state actors to reduce their prison populations.<sup>14</sup> In almost every instance, outside pressure from those incarcerated and their families, advocacy groups, medical professionals, and public safety experts, propelled whatever action governments ultimately took.<sup>15</sup>



# COVID-19 IN PRISONS: THE NORTH CAROLINA EXPERIENCE

On March 10, 2020, Governor Roy Cooper declared a state of emergency to respond to the emergence of the coronavirus in the United States.<sup>16</sup> Three days later, he suspended visitation to all state prisons.<sup>17</sup> Two weeks later, he ordered people across the state to stay at home for 30 days, until April 29, 2020, limited gatherings to 10 people, and prioritized social distancing measures in hopes of slowing the spread of the COVID-19.<sup>18</sup>

Calls for Governor Cooper and his administration to address the clear and present danger COVID-19 posed to people incarcerated in North Carolina prisons started almost immediately following his first declaration of a state of emergency. Citing constitutional and statutory authority permitting immediate action, advocates urged Cooper to:

1. **Commute sentences** for older and vulnerable citizens with compromised immune systems, anyone who was within 12 months of release from their active sentence, and anyone being held on a technical violation of probation or parole;
2. **Expedite mass release** of those permanently disabled, geriatric, or terminally ill; and
3. **Expedite the review** of people eligible for parole, particularly those over 65 years of age.<sup>19</sup>

After weeks of inaction, the presence of COVID-19 in multiple prisons, and a mass outbreak of the disease at

Neuse Correctional Facility in Goldsboro, North Carolina, a coalition of advocacy organizations—American Civil Liberties Union of North Carolina, Disability Rights North Carolina, Emancipate NC, Forward Justice, and the National Juvenile Justice Network—filed a lawsuit in Wake County Superior Court.<sup>20</sup> Detailing the substantial risk of serious harm, including death, that the coronavirus posed to incarcerated people across the state, the plaintiffs alleged that the state of North Carolina’s “fail[ure] to address the imminent mass suffering and death threatened by COVID-19” amounted to a violation of the North Carolina Constitution’s prohibition against cruel and unusual punishments.<sup>21</sup> The lawsuit was brought on behalf of the North Carolina State Conference of the NAACP, Disability Rights North Carolina, ACLU of North Carolina, three incarcerated people, and the spouse of an incarcerated person.<sup>22</sup>

On June 16, 2020, the Wake County Superior Court granted a preliminary injunction, ordering the State of North Carolina to utilize population reduction measures and implement safer testing and transfer practices.<sup>23</sup> Subsequent orders followed, including an order appointing a “Special Liaison” to the Court to monitor the state’s prison population reduction efforts and its COVID-19 response.<sup>24</sup>

Ultimately, on February 25, 2021, the parties to the lawsuit reached a settlement, which required the early release of at least 3,500 people from state custody within the following 180 days.<sup>25</sup>





# IMPLEMENTATION OF *NC NAACP V. COOPER*

Following the settlement, North Carolina committed to releasing the required individuals through three pre-existing programs: the award of **Discretionary Time Credits**, the **Mutual Agreement Parole Program**, and the **Extended Limits of Confinement Program**.<sup>26</sup>

## Discretionary Time Credits

In North Carolina, a prison facility head may order discretionary time credits “to effectuate the orderly release” of individuals nearing their projected release dates.<sup>27</sup> These credits essentially allow prison officials to award small amounts of credit necessary to ensure an individual’s release from prison happens on time or during the work week.<sup>28</sup> Though there is no strict limit to how much discretionary time credit an individual may receive, the prison policy clearly contemplates that these credits will amount to a few days at most, and are only for those who are otherwise scheduled for release in the very near future.<sup>29</sup>

## Mutual Agreement Parole Program

The Mutual Agreement Parole Program (MAPP) is designed for individuals eligible for people. To be eligible, the person must be in medium or minimum security, have no detainer or pending court action that could result in further confinement; and be infraction-free for at least 90 days prior to the recommendation. Upon entry into the program, individuals must complete structured activities, including educational, skills, personal growth and behavior modification programming.<sup>30</sup> Although participants in this

program will almost certainly be serving a sentence for a crime against a person, the eligibility limits guarantee that they will be older, if not elderly, and considered low risk by the prison system.

## Extended Limits of Confinement

The Extended Limits of Confinement (ELC) program permitted individuals who (1) were not serving a sentence for a crime against a person, (2) were scheduled for release in 2020 or 2021 (or 2022 if aged 65 and older), and (3) pregnant, aged 65 or older, or had a underlying health condition creating a high risk of severe illness from COVID-19, to serve the remainder of their sentences outside of prison while under the supervision of community corrections.<sup>31</sup>

In addition to these prison policies and programs, the North Carolina Post-Release Supervision & Parole Commission began declining to pursue certain supervised release and parole violations, most especially technical violations (e.g., positive drug test, non-reporting, failing to attend treatment). Instead of detaining individuals and pressing these violations, which were likely technical in nature, the Commission released them back to supervision, further reducing the prison population.

According to the North Carolina Department of Public Safety (DPS) and its internal “Settlement Dashboard,” which tracked its various “early reentry” mechanisms in response to the lawsuit settlement,<sup>32</sup> between February 25, 2021 and July 26, 2022:

- North Carolina prisons released **7,063** people early from state custody, almost entirely through the award of discretionary gain time. Records provided by the North Carolina prison system in response to public records requests were incomplete with respect to the total number of days “saved” by moving up release dates and allowing these individuals to leave confinement early.
- North Carolina’s Post-Release Supervision & Parole Commission (PRS) released an additional **4,784** people early from state custody who were accused of violating their post-release supervision or parole.

This unprecedented undertaking by PRS, which sets conditions for post-release supervision, eliminated the possibility that these individuals would be found in violation and returned to prison as a result. Because each of these individuals could receive up to 9-12 months in prison as a penalty for these alleged violations,<sup>33</sup> a conservative estimate of the days in prison saved through this effort is **645,840**.<sup>34</sup> The actual number could be much higher.

- Even prior to the settlement, DPS had released 1,002 people under the Extended Limits of Confinement (ELC) program as an effort to lower the risk of COVID-19 in prisons. Following the settlement, between February 25, 2021 and July 26, 2022, DPS permitted an additional 602 people to serve the remainder of their sentence at home or in transitional housing through ELC, bringing the total to **1,604**.

# OVER 13,400 PEOPLE WERE GRANTED EARLY REENTRY BETWEEN FEB 25, 2021 AND JUL 26, 2022

**7,063**

who were released through Award of Discretionary Gain Time

**4,784**

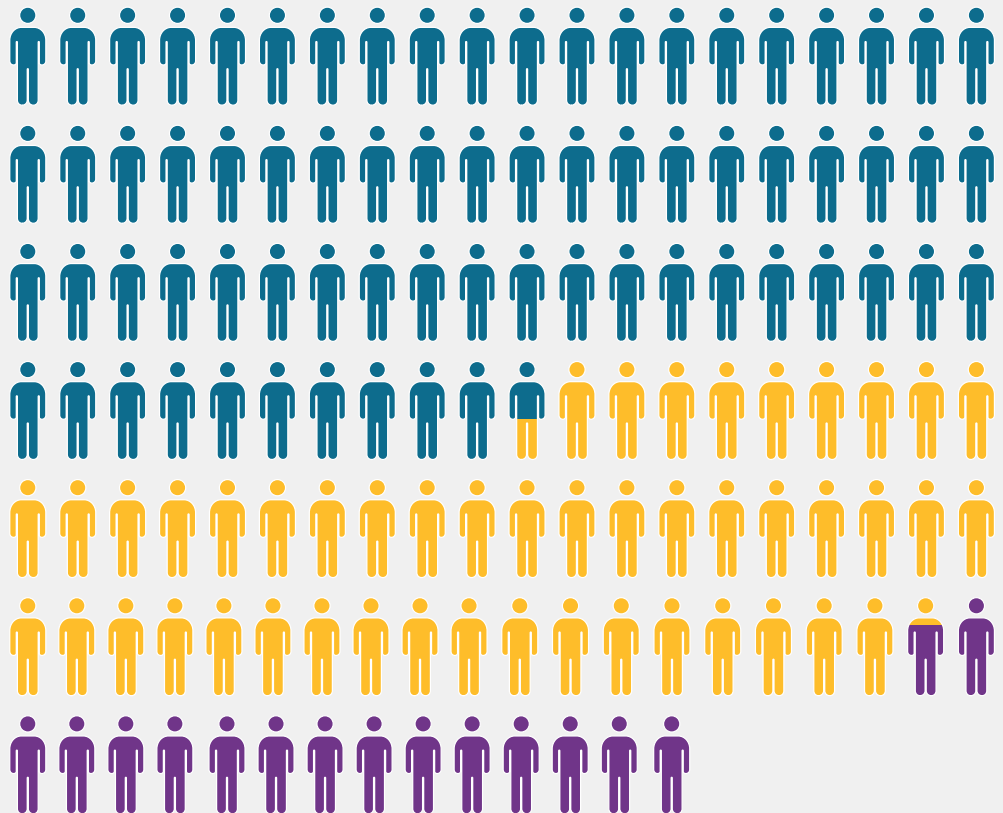
who were accused of violating post-release supervision or parole

**1,604**

who were released through the Extending the Limits of Confinement program



REPRESENTS 100 PEOPLE



Through these joint efforts, the state of North Carolina saved hundreds of thousands of prison days. Because the cost to imprison a single individual in North Carolina, on average, is \$29,554 per year,<sup>35</sup> the response to this settlement has the potential to save North Carolina taxpayers millions of dollars, as well.

Most importantly, the impressive early release of so many incarcerated individuals had no negative public safety impact. Neither the Department of Public Safety, Department of Adult Correction, nor the North Carolina Post-Release Supervision & Parole Commission has reported or released any data suggesting that these early reentries resulted in additional supervised release violations or increased reoffending. To the contrary, in terms of successful reentry, they appear to have had the same or better success rates than releases North Carolina prisons make in the normal course of operating their facilities.<sup>36</sup>

According to the North Carolina Bureau of Investigation's Crime in North Carolina annual reports, the rates of both violent and property crime decreased statewide from 2020 to 2022, the same period of time as these prison releases.<sup>37</sup>

While the rate of "violent crime" offenses fell during this period of time, the individual murder rate in North Carolina increased in 2020, as it did across the country at that time – both in places that reduced its prison populations and in places that did not.<sup>38</sup> The uptick in murders between 2020 and 2021 started prior to North Carolina's efforts to bring more people home from prisons, and there is no evidence that they are related in any manner. Notably, the North Carolina murder rate subsequently decreased 13% between 2021 and 2022.<sup>39</sup>

# DURHAM COUNTY: A LOCAL APPROACH TO GIVING A SECOND LOOK

While *NC NAACP v. Cooper* resulted in a successful statewide effort to secure early reentries for thousands of incarcerated people serving sentences for relatively low-level offenses, another approach was being taken by the Durham County District Attorney's Office to give a second look at prison sentences. Dozens of Durham County cases involving more serious felony convictions were revisited during this same period of time, resulting in substantially shortened sentences for people who were not otherwise nearing their release dates. This approach, like the statewide effort, provided strong evidence that it is possible to safely bring home people early from prison.

Under North Carolina law, a motion for appropriate relief (MAR) is a way to challenge a person's conviction or sentence.<sup>40</sup> In 2012, the legislature added language to the MAR statute that made clear that prosecutors could agree to granting relief sought by someone—for example, consenting to the modification of a person's sentence or the vacating of their conviction.<sup>41</sup> Utilizing this authority, over the course of approximately three years, the Durham County District Attorney's Office consented to the release of 64 different people who were serving active sentences for offenses ranging from property crimes to drug offenses to murder.<sup>42</sup> In each filing, the parties identified at least one independent basis for release—for example, ineffective assistance by the person's original lawyer,<sup>43</sup> other constitutional violations during trial or sentencing,<sup>44</sup> or a claim that the individual's age, health, time served, good behavior, rehabilitative efforts, and other conditions rendered their continued imprisonment.<sup>45</sup>

While these cases were revisited in the context of the health concerns raised by COVID,<sup>46</sup> our review makes clear that there were a host of other reasons these individual sentences warranted a second look and, ultimately, relief.

These reasons included:

- the person's age at the time of the offense, particularly if they were young and psychologically immature;
- whether the individual received an overly harsh sentence that was out of step with current sentencing practices (including whether the person could receive the same sentence under current laws);
- the individual's rehabilitative efforts while in custody;
- if the individual assisted the state by providing valuable information about other offenses;
- whether the likelihood of recidivism was extremely reduced due to infirmity or advanced age (55+); and
- other legal issues that undermined the fairness of the original trial.

Our analysis of these 64 cases showed that these releases were a resounding public safety success.

The total years of imprisonment saved through these efforts was just over **598 years**.<sup>47</sup> The individuals released fared remarkably well, with **only one of the 64** returning to prison after their release.

These efforts also saved North Carolina taxpayers a significant amount of money—perhaps as much as \$17.7 million.<sup>48</sup>

Notably, these results mirror the success of similar groups of people with serious crimes released in other states. For example, a landmark 2012 court ruling in Maryland resulted in the potential release of 235 people serving life sentences (84% of whom were convicted of murder and 13% of rape). Over six years, 200 of these incarcerated people were released; 97% were never re-incarcerated.<sup>49</sup> A more recent study of recidivism rates for people who were sentenced as juveniles in Philadelphia, Pennsylvania, to life without the possibility of parole and then subsequently release found that just 1.14% of those 174 individuals were ever reconvicted for any offense.<sup>50</sup>



# COMING HOME

Behind every “early reentry” or MAR granted is the story of someone who has been locked away from their loved ones and separated from their community. These successful efforts to bring people home “early” from prison not only safely reduced incarceration and saved money, but also recognized the inherent value of every person, no matter the worst thing they have ever done, and the ability of the criminal legal system to appreciate growth and rehabilitation, and offer people the opportunity to realize the future they deserve.

## Alton Bell: The Power of Forgiveness<sup>51</sup>

Alton Bell grew up with two supportive parents and four siblings in a middle-class Raleigh neighborhood. Although he had difficulty in school and dropped out at age 16, Alton maintained a job, working as a security guard, and had no trouble with the law.

On September 19, 1992, at age 24, everything changed dramatically. Alton was out with Gregory Bagley when Bagley had car trouble. Harold Brinkley arrived to tow Bagley’s car. While Brinkley was hooking up the car for the tow, Bagley pressured Alton to take Brinkley’s gun away from him. (Having been robbed before, Brinkley carried a gun to protect himself.) Alton refused. After they all drove to the repair shop in Brinkley’s wrecker, Bagley this time urged Alton to hit Brinkley on the head with a pipe. Alton again refused. Brinkley then gave the men a ride to the Eastside of Durham. On the way, they picked up another person, Rodney Timmons. When Brinkley stopped to drop everyone off, he asked for \$40 in payment. Bagley told Alton and Timmons that he would take care of it. As Alton and Timmons walked away from the tow truck, Bagley shot and killed Harold Brinkley. Bagley then stole Brinkley’s wallet, which contained about \$3,000. The three men divided up the money, which Alton testified he spent on drugs.

The police soon apprehended the men. Alton was charged with capital murder. He quickly cooperated, sharing all the information he had and agreeing to testify against Bagley. Alton ultimately pled guilty to second-degree murder and robbery with a dangerous weapon. At his sentencing, Alton expressed his deep remorse to Harold Brinkley’s widow: “I’m sorry for everything that took place. I wish I could bring Mr. Brinkley back. I’m sorry.” The prosecutor noted that Alton was the least culpable of the three men, “genuinely remorseful,” and could not have been more cooperative with the authorities. Nevertheless, Alton received the same sentence as Bagley: life with parole.<sup>52</sup>

Alton began taking GED classes immediately upon arriving in prison. He completed a number of programs and classes while incarcerated, including Thinking for a Change, Anger Management, Building Trades, Drug Abuse and Alcoholism Residential Treatment (“DART”), Human Resources Development, and Character Education. Despite his incarceration, Alton maintained his relationship with family members, including his mother, his sister, his daughter, and his grandchildren.

While in prison, Alton also began corresponding with Harriette Brinkley, Harold Brinkley’s widow. Ms. Brinkley had been moved by the clear remorse Alton expressed during his sentencing, so she reached out to him. The two later met in



person while Alton was attending an Alcoholics Anonymous meeting while on a special pass from prison. Ms. Brinkley hugged Alton, forgave him, and urged him to forgive himself. She then became a staunch supporter of Alton's release.

"I called her name and she turned around and looked at me, she's like, 'I was wondering when he was gonna come and say something to me,'" Alton recalled of their meeting in person. "I just, I couldn't [believe it]; my emotions got the best of me, and I just [held] her and just cried and told her I was sorry. So me and her both cried. She always encouraged me."

Recognizing Alton's impressive rehabilitation and prison record, Ms. Brinkley's forgiveness and support, and the additional reentry help he would receive upon release from a nonprofit organization, the Durham County District Attorney's Office agreed to Alton's release after he had already served decades in prison.

Alton was finally released and reunited with his family on January 5, 2024.

Alton reports that navigating reentry has been more difficult than he anticipated but not in a negative way; he describes it as a learning process. Alton worked at a fish market at the time of publication and was trying to make progress on getting his driver's license back.

"It's like I never lived, to a certain degree," Alton said. "I'm behind on a little stuff. But once you sit back and watch and observe, you catch on to [life]."

Based on his own experience and the men he knows from prison, Alton strongly supports "second look" policies. He shared that a lot of the men he was locked up with have



Photo credit Jodi Crews, SCSJ

aged and are ready to come home. As he puts it, "Now they couldn't hurt a flea."

"A lot of guys just want their chance," he added. "I seen guys when I first was in there that was walking fine. I see them now and they're bent over, you know, got medical problems stuff going on like that. And I feel like some of them deserve a shot. I just do believe that."

## Scellarneize Holloman: The Cycle of Trauma<sup>53</sup>

When COVID-19 hit, Scellarneize Holloman was serving a 19.5 to 25 year sentence for stealing a credit card and unsuccessfully attempting to purchase approximately \$1,800 worth of merchandise from Sears with it.

Scellarneize had a difficult childhood plagued by abuse, neglect, and abandonment. Her parents, who both used drugs, forced Scellarneize to steal for them when she was very young. Through theft, the family was able to survive and support her parents' drug habits. As her parents struggled with their addiction, Scellarneize lived in and out of foster care, where she suffered abuse, neglect, and molestation, for much of her childhood.

Scellarneize's history of trauma led her to engage in risky behavior, including early sexual experiences and drug use. She had two children while a teenager – one at 14 and another at 18. Like her parents had taught her, Scellarneize stole to support herself and her children and avoided the pain from her traumatic childhood by using drugs. At 20, Scellarneize found herself embroiled in an abusive relationship and pregnant with her third child. Her self-destructive behavior continued in the following years, and by age 30, she had accumulated enough felony convictions to qualify as a "habitual felon" under North Carolina law.

After Scellarneize was arrested for the theft of the credit card and attempted purchases at Sears, she was charged and convicted of two counts of identity theft. Although the victim, the owner of the credit card, believed that Scellarneize should be sentenced to drug treatment, the prosecutor asked the court to treat her as an "habitual felon," and enhance her punishment. After Scellarneize's conviction on these counts, the judge imposed two consecutive sentences of 117-150 months.



Photo credit Wilson Center for Science and Justice at Duke Law

In prison, Scellarneize participated in drug treatment, behavioral intervention programs, parenting and healthy relationships classes, and job skills training programs. Through these interventions, Scellarneize began to accept responsibility for her actions, recognizing that, even though she had a traumatic childhood, that did not give her license to steal and use drugs. She also recognized that she had repeated many of her parents' mistakes, hurting her children in the process, and expressed genuine remorse. By 2022, it was clear that Scellarneize had changed dramatically from the days before her most recent offense. Witnessing her remarkable progress, a corrections captain wrote a letter on Scellarneize's behalf, noting that she is "pleasant, respectful, and interacts in a positive manner with the staff."

That same officer knew Scellarneize from an earlier prison admission, when she was cycling in and out of custody, using drugs, and stealing, and noted that Scellarneize had notably transformed herself from "the young woman who stayed in trouble in the past."

Recognizing her impressive rehabilitation and the disproportionately long sentence originally imposed, the District Attorney's Office agreed to Scellarneize's release in 2022.

"I thought it was over for me when I was in there and I, you know, I kept saying that I want to go home, that I am going to go home," Scellarneize said in a recent interview. "And I don't know, I kind of lost all hope after [knowing I would have to be there] for 19 to 25 years."

She said she dealt with a lot of mental health issues while in prison, specifically depression, and she's still adjusting on the outside.

"When I first stepped out of prison, I was happy and scared," she said. "I have to get used to society again. But I think I'm kind of institutionalized a little bit, you know? I was happy for a couple of months. And then, you know, I started getting stressed out and depressed and everything [around] like jobs and housing situations and stuff like that. It's just hard. It's really hard out here. I wasn't expecting it to be this hard."

Scellarneize said her mom, her kids, and her friends currently support her. She doesn't like asking for help, but she does it so she doesn't get in trouble again or risk being sent back to prison.

Scellarneize says she has worked hard to stick to her principles and is excited about building a new life for herself. She says, "I just did all this time for this. I'm not gonna let anybody get in my mind."

## Randall Jenkins: The Will and Work to Grow and Change<sup>54</sup>

At the age of 58, after nearly three decades in prison, Randall Jenkins was given a second chance at life outside prison.

"I gotta say, it's been good. I own my own home now—I just closed on my house on Valentine's Day," he said. "I have transportation. I have a job. You know, everybody can't say that."

In the few years since he was released, Randall has been able to reconnect with his family and spends time mentoring other men with similar cases and or situations as his to try and give back and set an example.

"Don't give up," he said of his advice to others. "Don't give up on yourself. And North Carolina, don't give up on people. You know, we're quick to just give up and throw our hands up and say, 'Oh, they're no good.' You don't know."

In 1992, however, North Carolina – and Randall, himself – was ready to give up on Randall Jenkins. That year, Randall was convicted for the kidnapping and rape of his former girlfriend. He had gone to see his ex-girlfriend, whom he had previously lived with. According to subsequent trial testimony, at some point after she let him inside her apartment, Randall restrained her and then raped her. When the police arrived, Randall ran towards them yelling "shoot me, shoot me." He later told the police that he did not remember anything that had happened once he arrived at the victim's apartment.

Jenkins, who had no prior convictions, was convicted of first degree rape, second degree kidnapping, and sentenced to life imprisonment.

Randall entered prison lost and alone. His mother died about a year before he was sentenced; he had been convicted of a violent crime against someone he had once loved; and he was not sure he would ever come back home.

"So, when I went to prison, I had time to really sit down and think about, what do I want my life to be?" he said in a recent interview. "I wasn't just going to sit there and be a lump on a log and just be a number. I was going to improve on myself, daily. ... Even though I had a life sentence, I had a direction of where I wanted my life to go, even if it was behind a fence."

Randall started taking classes about two weeks after he arrived at Central Prison. Over the next nearly three decades, he took every class he could, earning certifications and learning trades. In addition to becoming a master welder, he became intensely focused on addressing his behavior and mindset that had caused harm. He enrolled in the prison's Sex Offender Accountability and Responsibility (SOAR) program, a cognitive behavioral treatment program which helps people convicted of sex crimes learn to understand why they sexually abused someone – and prevent it from happening again. SOAR graduates have the lowest rates of re-arrest and reimprisonment of any correctional program.<sup>55</sup> After successfully completing the program, Randall became a peer counselor in SOAR.

Ben Finholt, an attorney who represented Randall, identified his case for review by the Durham County District Attorney's Office for a number of reasons. In addition to his remarkable growth and rehabilitation – becoming a valued SOAR counselor, developing a trade, no infractions for over 17 years – Randall also stood out because under today's sentencing laws, he would not have received a life sentence (he had served 29 years at the time, whereas current



sentencing would carry a maximum of 26 years).

“He fit the profile of someone who didn’t need to be in prison any longer from a public safety or fairness vantage point ” Finholt said.

Randall has worked a master welding job since he left prison, the trade he learned while incarcerated. He leaned on his family and his wife for support while navigating reentry. Despite many challenges, Randall said his focus and determination won out.



Photo taken by Marcus Pollard for the Wilson Center for Science and Justice at Duke Law



# PROOF OF CONCEPT: SAFELY REDUCING PRISON POPULATIONS

North Carolina's successful—and overwhelmingly safe—experience with releasing thousands of individuals from prison in the aftermath of *NC NAACP v. Cooper*, and the local efforts to use back-end release mechanisms to bring individuals home from prison, should come as no surprise.

Decades of research have revealed that prison sentences rarely serve any public safety objective. The threat of prison sentences, especially lengthy ones, do not deter members of the public from committing crimes.<sup>56</sup> They also rarely serve any rehabilitative purpose and may, in fact, lead to increases in offending rather than decreases.<sup>57</sup> The vast majority of imprisonment today also serves no useful incapacitative purpose. Over the last 50 years, the range of individuals and offenses that we punish with prison time has ballooned to capture an enormous number of people who simply do not present public safety risks.<sup>58</sup> Even where violent crimes are involved, the sentences we impose are so lengthy that they stretch decades beyond any point in time when the person incarcerated is reasonably likely to commit another violent offense.<sup>59</sup> This research, therefore, predicts that targeted efforts to shorten prison sentences that are already much too long to serve any beneficial purpose will

have no negative effect on outcomes or public safety.<sup>60</sup> North Carolina's experience during the COVID-19 pandemic bears that out.

The same is true of many jurisdictions across the country that have seen prison incarceration rates decline since the end of the 2010s—and the prevalence of crime decline with them. Between 2007 and 2017, 34 states reduced their prison populations and their crime rates.<sup>61</sup> For example, since 2008, New York has reduced its prison population by nearly 50 percent,<sup>62</sup> and overall crime rates in the state have continued their steady decline during that period.<sup>63</sup> In Massachusetts, the incarceration rate has fallen by 45 percent since 2012.<sup>64</sup> Violent crime rates in the state plummeted by 21 percent and property crime rates by 50 percent over that same time span.<sup>65</sup> Because this country currently overuses incarceration to such a high degree, multiple studies estimate that even substantial decarceration efforts would not increase crime at all.<sup>66</sup> An Illinois study, for example, found that the state could reduce all prison terms of 10 years or more by a full 30 percent without experiencing any detectable increase in arrests.<sup>67</sup>





# LESSONS LEARNED

North Carolina's experience sending more people home earlier than originally planned from prison during the COVID-19 era was unquestionably successful. Both the statewide undertaking that occurred as a result of *NC NAACP v. Cooper*, as well as the process that was driven through the Durham County District Attorney's Office, resulted in a dramatic number of prison years avoided and millions of taxpayer dollars saved, with no measurable impact on public safety.

In fact, studies of releases across the nation during COVID-19 show that the individuals who benefitted from them had *lower* rates of rearrest and reincarceration than those processed through normal release procedures.<sup>68</sup> For example,

**of the more than 11,000 people released from federal prison during the pandemic, only 17 were charged with new crimes, a recidivism rate of 0.15%.<sup>69</sup>**

These bare statistics, though impressive, simply fail to capture the immeasurable value of giving people an opportunity to make a new start, rediscover interests and talents, apply all that they have learned over the years, and spend precious time with their families and loved ones.

Further, not only were these efforts successful in terms of public safety outcomes, they are also politically popular. Over the last decade, polling shows that most Americans, regardless of political affiliation or ideology, support a criminal legal system that is less punitive. For example, 71% of voters believe that it is important to reduce the American prison population, including 87% of Democrats, 67% of Independents, and 57% of Republicans.<sup>70</sup>

# RECOMMENDATIONS

The efforts explored here provide a compelling roadmap for different ways to safely bring people home from prison before the expiration of their current sentence. And we shouldn't wait for another pandemic or crisis to do it.

Based on the experiences examined in this report, ways to achieve this goal include the following:

- ✓ NC Department of Adult Correction should focus on maximizing use of the Extending the Limits of Confinement (ELC) program to transition eligible individuals to home confinement.
- ✓ NC Department of Adult Correction should permanently expand its use of discretionary time credits to accelerate the release of individuals nearing the end of their sentences.
- ✓ NC Department of Adult Correction should prioritize identifying and enrolling all individuals eligible for Mutual Agreement Parole. Because this release mechanism is only available to those who committed their crimes prior to 1994, by definition, these individuals have been incarcerated for close to three decades and have reached an age where they are extremely unlikely to pose any danger to the public.
- ✓ NC Post-Release Supervision and Parole Commission should decline post-release supervision violations that do not involve the commission of a new crime.
- ✓ Like NC Post-Release Supervision and Parole Commission did, prosecutors should decline to pursue probation violations that do not involve the commission of a new offense. In fiscal year 2020-2021, a full 36% of prison admissions resulted from probation revocations.<sup>71</sup>
- ✓ The Governor's Office should expand its use of clemency procedures to help reduce excessive and unnecessary incarceration. To date, Governor Cooper has used his clemency power sparingly, granting relief to a small number of people since taking office.<sup>72</sup> He and his successors could establish criteria and procedures, much like President Barack Obama did in 2014,<sup>73</sup> to standardize and accelerate commutations and pardons.



- ✓ The legislature should explore changes to North Carolina's sentencing structure and laws to reduce minimum and maximum sentences, limit the use of prison as a sanction for less serious public order, property, and drug offenses, and expand the ability of judges, prosecutors, and corrections officials to reduce long sentences when the individual's specific circumstances reveal further imprisonment is no longer necessary for public safety.
- ✓ Prosecutors should commit to taking a "second look" at long sentences that are disproportionate to the offense or being served by individuals who have shown substantial rehabilitation. Organizations founded and led by former prosecutors, such as For The People and Fair and Justice Prosecution, have developed briefs, guides, and toolkits for prosecutor offices that are exploring "second look"

and resentencing mechanisms in their offices.<sup>74</sup> The Durham County experience, in particular, provides a strong basis to consider expanding opportunities to take a "second look" at very long sentences imposed for more serious crimes. North Carolina, like nearly every other state, has a rapidly aging prison population. It is well-established that people "age out" of criminal behavior, and that lengthy sentences do not have a significant deterrent effect on crime. An increasing number of states are exploring "second look" processes to allow courts to reconsider a person's sentence to evaluate whether they are fit to be safely released. These reviews also provide opportunities to assess whether sentences imposed many years ago remain "just" in light of current sentencing laws.<sup>75</sup>



# CODA: NORTH CAROLINA'S PRISON STAFFING CRISIS

To be certain, the prison system is still in crisis—a crisis that could be significantly mitigated by continuing to reduce North Carolina's prison population in the ways described above.

North Carolina has long experienced a shortage of corrections staff.<sup>76</sup> Serving as a corrections officer is a difficult and stressful job that is often more demanding and less lucrative than private sector employment.<sup>77</sup> Even before the pandemic, many corrections agencies—including North Carolina's Department of Public Safety—faced “record levels of vacancies” that rendered their facilities “critically dangerous.”<sup>78</sup> COVID-19 posed a direct threat to the lives of many corrections staff, and the staffing shortfalls deepened.<sup>79</sup> Faced with a new and acute danger, a flood of officers retired and resigned.<sup>80</sup> Today, about 40 percent of North Carolina prisons' correctional officer positions are vacant,<sup>81</sup> compared to 16 percent in early 2021.<sup>82</sup> Understaffed prisons pose substantial hazards to both corrections staff and the incarcerated. Remaining officers are forced to work increasingly long shifts and supervise many more individuals than is recommended or safe.<sup>83</sup> For the incarcerated, a shortage of correctional officers means long lockdowns, limited access to health care, counseling, or programming, and reduced opportunities for recreation and showering.<sup>84</sup> These conditions only increase tensions between the prison population and the staff and result in more incidents of violence.<sup>85</sup> In the future, these conditions will only become all the more dire, as the state's prison population is currently growing much faster than officials projected.<sup>86</sup>

Reducing the state's prison population would be a safe and effective way to reduce correctional officer workload, while freeing up critical state resources for spending on other priorities.

In the wake of the outbreak of COVID-19, North Carolina clearly demonstrated its ability to safely bring people home “early” from prison. The tools exist to continue these efforts, and that work should continue.

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- 76** Ames Alexander and Gavin Off, *NC Prison Staffing Shortage 'Critically Dangerous'*, The Charlotte Observer (Mar. 20, 2018), <http://www.charlotteobserver.com/news/local/article205973774.html>; Ames Alexander and Gavin Off, *Prison Staff Shortages, Dangers Have Climbed. 'We Need Help,' Officer Says*, The Charlotte Observer (Nov. 8, 2017), <http://www.charlotteobserver.com/news/local/article183187781.html> (reporting that 16% of NC corrections officer positions were vacant); see also Joseph L. Martin, et al., "They Can Take Us Over Any Time They Want": *Correctional Officer's Responses to Prison Crowding*, 92 *Prison Journal* 88 (2012) (noting that Southern prisons in particular are "among the most underfunded, understaffed, and crowded in the nation."); Andrew Lapin, *Inmate assaults on federal prison officers underscore staffing, budget shortfalls*, Government Executive (Jan. 11, 2012), <https://www.govexec.com/defense/2012/01/inmate-assaults-on-federal-prison-officers-underscore-staffing-budget-shortfalls/35816/>.
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- 80** *Id.*
- 81** Kelan Lyons, *Prison Job Vacancy Rates Still High as Prison Population Exceeds Projections*, NC Newsline (April 5, 2024), <https://ncnewsline.com/2024/04/05/prison-job-vacancy-rates-still-high-as-prison-population-exceeds-projections/>.
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