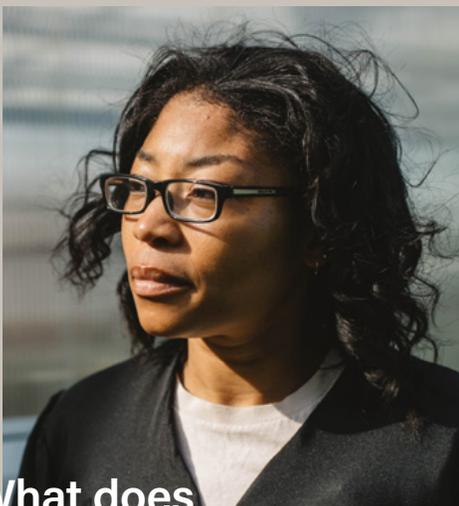


News Inside



“What does Indianapolis need? A solution to this housing crisis. What do women in prison need, more than anything? Ownership. Of our minds, of our bodies and of our physical homes.”

Clockwise from top left: Natalie Medley, Connie Bumgardner, Char'dae Avery, Kristina Byers-Escobedo, Rheann Kelly, and Toni Burns are students in the housing policy class at Indiana Women's Prison. ANDREW SPEAR FOR THE MARSHALL PROJECT

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A Letter from Lawrence

Hello friends! I want to thank everyone who took the time to read the first issue of News Inside. The letters of appreciation I've received show how much you all believe in the notion of redemption and understand that information is the path toward it.

So many of you shared your dreams for freedom. Some have innocence claims, others have parole aspirations, hoping to finally get that new birth certificate, emblazoned with your release date. Still others, after deep changes in their hearts and minds, simply hope for a sentence reduction.

And many of you, in sharing your stories, have asked The Marshall Project for legal assistance. I want to make clear that we are not attorneys or advocates but a nonprofit, nonpartisan news organization that reports on the U.S. criminal justice system.

Still, I am dedicated to assisting you. And the way I can best do that is to provide you with accurate unbiased information that will not only expand your minds but also help you navigate the legal system. I chose the stories featured in this, our second issue of News Inside, with that in mind. One article describes how some states classify as "violent" certain offenses that many people would argue don't fit the definition—such as making meth, trafficking a stolen identity, selling drugs near a school, embezzlement. Such classifications have become targets for prison reformers and decarceration efforts. Then on page 13, Tom Robbins reports on measures taken by the Brooklyn District Attorney in New York City to lessen prison sentences. And then there is "Can't Afford a Lawyer?" on page 12. Washington state recently created a "legal technician" position, which provides much needed legal representation for indigent parties in civil cases. This development has the potential to spread across the country and someday branch into different fields of law.

To lock-in your understanding of it all, I've also included a "Thinking Inside the Box" quiz, on page 23. It's designed to be both fun and stimulating, which can be especially useful for individuals in solitary confinement.

I hope every article in this issue—and those to come—demonstrate that I am committed to your needs. I hope you will find inspiration in them, learn from them and use them to better your mind and your life. After all, they have been curated specifically for you.

One more thing: The Marshall Project would like to learn more about how you read the news and how you feel about it. Were you a news consumer before your incarceration? Where did you get your news? Where do you get your news now? What media, if any, do you believe is trustworthy or reliable? What has been your personal experience with the media, if any? Tell me about any of your encounters with journalists, and how they made you feel. You can write to me at the addresses on the back of the magazine. Many thanks!



Lawrence Bartley

Lawrence Bartley is the Director of News Inside. He served a 27 years-to-life sentence and was released on parole in May 2018.

Letters to the Director

I am doing my entire sentence in a small county jail, and they do not provide information about any resources or any legal or educational resources available to prisoners. I do not even have access to a phone book or newspaper.

Eric Pfister
California

I don't know who or why they put The Marshall Project in my cell, but I want to see more of your publishings dealing with incarceration. You touch on so many topics from different (male and female) perspectives.

Adarryl Dendy
New York

[A]ll of the articles in [News Inside] were applicable and informative. I especially liked the one about the use of virtual reality to train long-term prisoners on what to expect from common experiences upon release. I am hopeful that the increased use of technology is something we will continue to have in our state... I appreciated the balance between articles by incarcerated and non-incarcerated individuals, with good information being supported by firsthand accounting.

Josh Cain
Oregon

Building Toward a Future

The unique prison re-entry plan conceived by—and for—women.

By Eli Hager

At the oldest women's prison in the U.S., on the west side of Indianapolis, Vanessa Thompson sat on a bunk in her cell, watching television. It was early 2015, the seventeenth year of her incarceration.

On TV, then-mayoral candidate Joe Hogsett was talking about a stubborn Indianapolis problem: 10,000 abandoned houses and lots, a remnant of factory closures and the mortgage crisis. Suddenly, Thompson had an idea, a way to redeem all those valueless homes while opening a door for prisoners just like her.

Born in Georgia and raised in Louisiana in what she said was a sexually abusive household, Thompson quit school at age 13 and was placed in foster care the same year. She began running away and became addicted to drugs for the next decade, she said. In 1998, she was implicated along with two others in the murder of a 16-year-old in a crack cocaine-related dispute; she was convicted two years later. She has maintained her innocence, arguing in appeals that prosecutors withheld evidence and witness testimony was tainted.

During her first several years at Indiana Women's Prison, Thompson piled up more than two dozen misconduct tickets for disrupting the prisoner count, arguing with staff, selling her psych meds and abusing Benadryl and cough syrup from the commissary. Underneath all that chaos, she felt a deep shame for letting down her two children, one of whom had ended up in prison himself.

But as she matured and teachers recognized her strengths, Thompson steadied herself. By 2012, she was enrolled in the prison's higher education program, taking a special interest in one of the most popular courses offered: Public Policy.

The class of about a dozen women studied civic literacy—how to write policy proposals, contact elected representatives and talk to the media. Every session, they pored over the fine print of bills then under consideration by the Indiana state legislature, especially those related to incarceration, drug addiction, domestic violence and sexual assault, the issues they knew best. They held mock committee meetings and looked for clauses they thought could be amended.

Thompson began to see potential for reform all around her. In everything and everyone, there were possibilities for renovation, restoration and renewal.

So in 2015, when Hogsett—a Democrat who is now mayor—promised he would address the abandoned housing crisis in East Indianapolis, where many

our bodies and of our physical homes.”

Thompson wrote up the proposal and brought it to class. The women dug into it earnestly.

They found a textbook on low-income housing policy and divided up the chapters. They met or held video chats with Habitat for Humanity, Youth-Build, Yale Law School and local community development corporations to learn about sweat equity. At the chow hall, they joked about getting some pink hard hats to wear and debated what their prisoner-reentry program would be called, settling on “Constructing Our Future.” A supporter set up a GoFundMe page, and the women wrote grant proposals to raise \$200,000 for tools and equipment and to pay the salaries of a small program staff. They also recruited a complete executive



Vanessa Thompson. JD NICKERSON FOR THE MARSHALL PROJECT

of her fellow inmates were from, Thompson was primed for her eureka moment.

What if, she thought, people reentering society from prison helped rebuild those homes, and then, after putting in several thousand hours of construction work, got to live in one? This would also help solve a second intractable social problem: the lack of housing for ex-offenders, which had helped send so many women she knew back to jail.

“It’s a double restoration—not just of the house but of the person,” Thompson, now 44, said in a recent interview. “What does Indianapolis need? A solution to this housing crisis. What do women in prison need, more than anything? Ownership. Of our minds, of

board, including a state legislator and a top staffer at the Indianapolis mayor’s office. They brought on an executive director, Andrew Falk, who formerly worked at the Indiana Attorney General’s office defending the state against prisoner appeals and now is a senior fellow at the Sagamore Institute, a public policy think tank.

In early April 2, four of the women—wearing their state-issue khaki uniforms, with their offender name tags around their necks and their nerves taut—presented videotaped testimony to the state legislature, describing their project. It was a rare, perhaps even unprecedented moment: prisoners advocating directly to lawmakers, and in a chamber

recently deemed the most conservative in the nation.

In a unanimous resolution, the assembly approved the Constructing Our Future proposal. Thompson broke down after the announcement.

"I've been in prison for two decades," she said. "And I always thought, when's it gonna be they take me seriously?"

After Pell Grants for prisoners were slashed as part of the 1994 crime bill, Indiana was one of few states that continued to fund higher education in its correctional facilities. That continued until 2011, when the legislature cut financial aid for inmates altogether.

Since then, college-behind-bars programs in the state have relied on small, often for-profit schools to provide funding and accreditation, as is true around the country. But since those in-

partment of Correction. The prison is the only maximum-security facility for women in the state.

Kauffman, 70 and a new grandmother, calls herself a "prison gadfly." She was one of the first women to graduate from Yale University—before promptly becoming a corrections officer. She said she became fascinated by incarceration after the 1971 revolt at Attica Correctional Facility in New York.

She has also written a book about the toll prison takes on the humanity of guards and inmates alike and become a national expert on white supremacist influences among corrections officers. Kauffman describes herself as politically radical but is highly practical in negotiating with prison officials and navigating byzantine rules to garner support. She has a fierce belief in the women's capac-

down her estranged husband's house after years of being assaulted. Another was convicted of attempting to have her ex-husband, whom she said had been abusive, murdered. Another was convicted of child neglect for failing to stop her husband from beating their baby to death; two others were drug addicts convicted of committing homicide while they were high.

Because those crimes invite judgment, Kauffman preached the importance of appearance and speaking in slang-free English before the legislature. When looking for issues to bring to lawmakers' attention, she taught the students to "leave to the ACLU" more controversial topics such as solitary confinement, which could make them seem like self-interested activists rather than policy experts.

"I never would have known my power as a citizen... if I hadn't become a prisoner. Imagine that," said Kristina Byers-Escobedo, 39, who is serving a 30-year sentence on a child neglect conviction.

In addition to their reentry program idea, the students have proposed multiple amendments to bills that have made it into law. In one instance, they invited women state legislators to watch as they poured water on the cheap menstrual pads stocked at the prison; the lawmakers were shocked and reported the problem to the lieutenant governor (also a woman), who immediately called multiple corrections officials for a scolding.

In another, the students read the entirety of a 450-page bill revising Indiana's criminal code and discovered a tiny but consequential mathematical error in how prisoners' sentence reductions would be calculated under the new law.

"The girls at the prison, they're our specialists," said Democratic state Rep. Karlee Macer, who represents the district where the prison is located.

The women even helped write the lyrics and record vocal parts for a professionally-produced opera, to be performed this month in Chicago.

"They are all such first-rate scholars, it's incredible," said Heather Ann Thompson, whose book about Attica recently won a Pulitzer Prize and who has mentored the students by video. "But the important thing to remember



Andrew Falk, left, works with Kelsey Kauffman, center, Michelle Jones, center-right, and Natalie Medley, far right, in the housing policy class at the Indiana Women's Prison. ANDREW SPEAR FOR THE MARSHALL PROJECT

stitutions struggle to generate revenue from incarcerated people, they often pull out from facilities entirely just when students have earned nearly enough credits for a degree, forcing many to start over from scratch.

Enter Kelsey Kauffman, a former volunteer teacher at the Indiana Women's Prison who in 2012 single-handedly created the program for Thompson and the others. "If it wasn't for her unbelievable personal will, it would not exist," said John Nally, director of education for the Indiana De-

ity to create, regardless of their crimes.

"Women in prison aren't thought of as public policy experts," she said. "But who knows more than they do about key issues like domestic violence, inner-city 'food deserts,' and what it takes for a mother to survive with her children on the streets of Indianapolis after she is released from prison?"

As is often true of women in prison, nearly all of the Indiana Women's Prison students have been victims of sexual assault or domestic violence.

One was convicted of burning



Sarah Jo Pender, left, works with Kristina Byers-Escobedo, right, in a class at the Indiana Women's Prison. ANDREW SPEAR FOR THE MARSHALL PROJECT

is that they're not some strange exception in the prison system. They've just had this rigorous program to support their curiosity."

The Department of Correction is, for the most part, supportive of the women. But there are still frequent lockdowns, stints in solitary, and other administrative interruptions and security protocols that prevent sustained academic work from getting done.

"These women teach me so much—like I'd never seen the statehouse before," said Carol Ann Foster, the prison's education program coordinator. "So you can forget this is a prison. But let me tell you, it is."

At a time when the incarceration of women, relative to men, is on the rise—and with about 75 percent of state prisoners getting re-arrested within five years of their release—Thompson and the women at Indiana Women's Prison hope their new reentry program can be a concrete and inexpensive national model for providing ex-offenders with both housing and a marketable skill.

But nothing is certain. Kauffman recently moved to California to be with her daughter, who is raising a new baby, but hopes the education program has been established long enough to carry on without her.

For Constructing Our Future to work, participants must first be allowed out on road crews and trained in construction skills in their final year of incarceration, which the Correction Department must fund and coordinate.

After the legislature's unanimous resolution this spring, Correction Commissioner Robert Carter wrote to the students and to Macer, the state representative, congratulating them for "thinking outside the four walls of the facility." But he noted that he could not guarantee their idea would be fully implemented as they proposed it.

The women are concerned that officials will implement it for the state's male inmates.

"Our labor is often discounted as women; if they give us vocational programs at all, it's always something

like cosmetology instead of auto repair or forklift driving," said Toni Burns, 44, who is serving a 30-year sentence on an attempted murder conviction. "This may not be for us personally, but it has to be for women."

Meanwhile, they still need to find a home base for the program, envisioning a large apartment complex in East Indianapolis where participants would stay after being released from prison while completing their 5,000 hours of sweat equity. Their dream is for the state to hand over the old women's prison facility, recently shuttered.

"Most of us in here have low self-esteem, co-dependency issues and struggle with being persistent and dependable," Thompson said, noting that she and others in the class may not benefit directly from the program because they are not due to be released for many years. "Half of our families have passed away while we've been inside... All the women [who] come here and live off of the state just go out and continue

to do that.”

But she hopes the program’s strict admissions process and promise of a safe, affordable home for ex-offenders and their children will offer the chance of a better future.

“All the politicians are so concerned about what happens when our prisoners go home,” said Thompson, whose own 18-year-old daughter was so moved by what her mom has accomplished that she plans to visit the prison in the coming months; when they last saw each other, she was 3. “Well, our question was: What’s home? Let’s try to answer that.”

In Just Two States, All Prisoners Can Vote. Here's Why Few Do.

In Maine and Vermont, low literacy rates and little access to information means many inmates don’t exercise their right to cast ballots.

By Nicole Lewis

When Sen. Bernie Sanders championed voting rights for prisoners during a CNN town hall, he spotlighted an intensifying national debate about why going to prison means losing the right to vote.

In only two states, Maine and Vermont, all prisoners are eligible to vote. However, some prisoners in Mississippi, Alaska and Alabama can vote while incarcerated, depending on their convictions. Sanders is the sole presidential candidate to support the idea of prisoners voting, regardless of their crimes. His stance may reflect the reality that his home state of Vermont, and its neighbor Maine, have long-established procedures, and general public acceptance,



Prisoners at the Marble Valley Regional Correctional Facility in Rutland, Vermont, register to vote in 2008. Only two states, Vermont and Maine allow people to vote while they're in prison. TOBY TALBOT/ASSOCIATED PRESS

of people voting from behind bars.

The idea is percolating in other states, however. In June, six of the 13 councilmembers in Washington, D.C. endorsed legislation that would let the city’s prisoners vote. Legislators in Massachusetts, Hawaii, New Mexico and Virginia introduced measures to allow prisoners to vote earlier this year. None succeeded, but several other states are making it easier for people to vote once they leave prison. In May, Nevada’s governor signed a bill that automatically restores voting rights for parolees. And, last year, voters in Florida re-enfranchised nearly 1.5 million residents with felony convictions while Louisiana restored voting rights for nearly 36,000 people convicted of felonies. Lawmakers are still considering similar proposals in Connecticut, New Jersey and Nebraska.

Still, most prisoners lose the right to vote while incarcerated. Roughly 15 states automatically restore voting rights upon release, but several states such as Alabama and Mississippi ban people from voting for life for some crimes.

Why are Vermont and Maine outliers? They share several characteristics that make voting by prisoners less controversial. Incarcerated people can only vote by absentee ballot in the place where they last lived. They are not counted as residents of the town that houses a prison, which means their votes can’t sway local elections if they vote as a bloc. And unlike many states, the majority of prisoners in Maine and Vermont are white, which defuses the racial dimensions of felony disenfranchisement laws.

Laws barring people with felony convictions from voting first began cropping up in Southern states during the Jim Crow era. Many voting rights advocates say the laws were a deliberate

attempt to limit black political power. Of the nearly 6.1 million people estimated to be disenfranchised because of a felony conviction, nearly 40 percent are black, according to a 2018 report by the Sentencing Project.

Joseph Jackson, founder of the Maine Prisoner Advocacy Coalition, suspects the racial demographics in Maine and Vermont may account for the fact that prisoners in either state never lost the right to vote. In Maine and Vermont, black people represent a larger share of prisoners compared to their share of the general population, but are a minority of the state’s prisoners overall, nearly 7 and 10 percent respectively.

In Maine and Vermont, the state constitutions guarantee voting rights for all citizens, interpreted to include incarcerated people from the earliest days of statehood (in Vermont, a legal decision dates from 1799). Past attempts to exclude those convicted of serious crimes have failed in the legislatures. Currently, there is no organized opposition in either state to voting from prison.

Corrections officials in both states encourage inmates to vote, but rely on volunteers to register inmates. In recent election years, voting advocacy organizations such as the League of Women Voters and the NAACP have coordinated with corrections departments to hold voter registration drives in the prisons. To bridge the information gap, they share one-pagers with information about the state candidates and explain their positions on key issues.

Yet the barriers to voting, both external and internal, remain high. Incarcerated people are restricted from using the Internet and often cut off from news in the places they used to live. They are not allowed to campaign

for candidates, display posters or show other signs of political partisanship.

Experts and volunteers who try to encourage voting from prison suspect that very few actually exercise the rights they have. Neither corrections department tracks inmate voting or registration, so statistics on participation or the political ideologies of prisoners are unavailable. Because their votes are counted along with other absentee ballots, election officials in Maine and Vermont do not specifically tally how many incarcerated people vote.

For John Sughrue, the law librarian at Southern State Correctional Facility in Vermont, voting is imperative, the only "effective tool" inmates have for bringing change to the prison system. Yet, he notes, only a tiny percentage of the people in the prison where he is incarcerated end up voting. Among the few interested in politics, discussing issues can be dangerous in prison; as in the rest of the country, liberal and conservative inmates are increasingly polarized.

"It seems the current political climate has rendered us inexorably divided," he wrote via the prison email system.

But the biggest issue, Sughrue says, is the shockingly high illiteracy rate among Vermont's prisoners. In helping people with their legal cases, Sughrue realized many can't read, and even those who can read struggle to write, which makes registering to vote and filling out a ballot practically impossible without help. The corrections departments don't track literacy rates among prisoners, but in Vermont officials estimate nearly 20 percent of inmates entered prison with less than a high school education. Some studies estimate nearly 60 percent of people in prison are illiterate.

Despite volunteers' efforts to engage incarcerated voters, many inmates in Vermont don't seem particularly interested, said Madeline Motta, who helped register Vermont prisoners in 2018. Motta says some of the inmates were surprised to find they could vote, assuming their felony conviction was an automatic disqualifier. Others were more cynical, and expressed a general distrust of anyone seeking public office. A handful felt as if there was no point. Motta and the other

volunteers tried to explain the benefits of voting during registration drives.

"We explained to inmates that elected officials are making decisions about your quality of life while you are incarcerated and once you are out," she said.

Motta estimates several dozen men registered to vote between the two prisons she visited, which house roughly 500 prisoners. Other volunteers had already registered some inmates, so even her count was inexact. In Maine, Jackson estimates the NAACP registered more than 200 voters last year, but he can't say how many actually voted.

Before the 2018 midterms, Kassie Tibbott traveled to five of Vermont's prisons registering voters. Tibbott runs the Community Legal Information Center at the Vermont Law School. She said she heard very little political chatter during her visits, but a handful of prisoners were buzzing over a state attorney race in Bennington. Tibbott recognizes that a lack of access to information may be partly to blame. Inmates can't go online to research candidates. Many watch television and listen to the radio, but may not tune into the news.

"They don't know enough about the candidates, so why would they vote?" she asked.

Voter disaffection is hardly unique to prisoners, said Paul Wright, executive director of Prison Legal News. Sixty-one percent of all eligible voters cast a ballot in the 2016 presidential election, and in the 2018 midterms, usually a time of lower turnout, that number dropped to 49 percent, according to Pew Charitable Trusts.)

Wright suspects that some of the apathy about voting stems from the relatively few candidates with track records on criminal justice that would appeal to incarcerated people or those with raw memories of encounters with police and prosecutors.

At the local level, he pointed out, officials who play a major role in shaping criminal justice outcomes such as sheriffs, judges and prosecutors often run unopposed or on tough-on-crime platforms. Progressive prosecutors are a relatively recent phenomenon. So, like disaffected segments of the general electorate, inmates may believe their

votes will make little difference.

"We don't have much of a democracy when it comes to candidate choice," he said. "Making the conscious choice in refraining from exercising your rights is just as important as exercising them."

Okay, What's the Second Step?

Now that the First Step Act passed, prison reformers are already making lists.

By Justin George

Months before the U.S. Senate pushed through new legislation that steers the federal prison system in a slightly gentler direction, liberals and conservatives debated whether the First Step Act would live up to its name. Would there be a second step, or would this be an excuse to declare "mission accomplished?"

Its passage late in December 2018 was widely hailed as the most significant criminal justice reform bill in nearly a decade. Yet while the bill should reduce the sentences of at least 9,000 federal prisoners and defendants next year, few supporters would say that its impact is anything but modest within the 180,000-prisoner federal system.

But just as important as the reductions in mandatory sentences for drug crimes, long-awaited relief for inmates skipped over by a crack sentencing revision eight years ago and millions



From left, Sens. Charles Grassley, Cory Booker, Mike Lee and Lindsey Graham at a news conference on the passage of the criminal justice reform bill, the First Step Act. TOM WILLIAMS/CQ ROLL CALL, VIA ASSOCIATED PRESS

of dollars in new prison programs, the First Step Act's widespread support in Congress and opinion polls demonstrates an appetite for more change, according to conservatives and liberals who joined forces to pass the measure.

"There's going to be a second step and a third step," said Mark Holden, general counsel for Koch Industries, who leads the Koch network's criminal justice reform efforts. "There's a lot more to do."

The hope is that the First Step Act could put Congress on a path paved by several states in recent years, including red bastions like Texas, Louisiana and Georgia, in an effort to make prisons less crowded and more focused on rehabilitation.

One possible next target is an array of conspiracy statutes, which can transform low-level offenses into compound felonies.

Among the narratives that helped drive support for reducing mandatory minimum sentences was the case of Alice Johnson, a grandmother given a life sentence for being part of a conspiracy that committed nonviolent drug and money-laundering crimes. In June, after the advocacy of reality-television star Kim Kardashian, President Trump issued Johnson a pardon, and her story became an argument prisoner advocates pointed to for why drug sentences needed to be reduced.

Holden said now's the time to examine how federal prosecutors charge people with conspiracy. Intent, he said, is a better way to determine a person's culpability than simply their associations or their presence at drug houses or during raids.

"Let's focus on the role of the individual in the alleged conspiracy," he said.

Jessica Jackson Sloan, national director and co-founder of the nonprofit #cut50 advocacy group, said women like Johnson and Cindy Shank, the main subject in the HBO documentary "The Sentence" whose lengthy sentence for conspiracy was also used to push First Step Act reforms, are changing "the narrative of conspiracy." She said she expects that they will continue to do so even more next year.

"A lot of women in particular get caught up in conspiracy charges because of a minor role," she said.

The First Step Act's widespread support in Congress and opinion polls demonstrates an appetite for more change, according to conservatives and liberals who joined forces to pass the measure.

Prisoner advocates also see momentum to overhaul the mysterious and subjective clemency and pardon process, saying the presidential power should be more widely applied on a uniform basis with the help of independent panels or commissions. A first step, they say, is moving the initial clemency petition screenings from the prosecutor-laden Department of Justice, which is where the Office of the Pardon Attorney is based.

"There's a fundamental problem with having the pardon attorney housed in the Department of Justice, because they have a fundamental problem with ever claiming a mistake," said David Safavian, deputy director of the right-leaning American Conservative Union Foundation's Center for Criminal Justice Reform.

Safavian also said Congress should do more to help former prisoners find work by removing obstacles, such as occupational license laws, that bar them from certain types of employment.

Pennsylvania, he said, offers a good example with its new Clean Slate Act, which lets people petition courts

to seal criminal records if they have stayed crime-free over a certain length of time.

Some members of Congress expect to focus on assuring that the federal Bureau of Prisons complies with a raft of incentives and rehabilitation programming folded within the First Step Act. According to multiple Inspector General and Government Accounting Office reports, the agency has a long track record of failing to follow Congress' intent on reform, as well as its own policies when it comes to sending prisoners to halfway houses, where they can get help transitioning back to society.

One way Congress can ensure compliance is making the bureau's top position a presidential appointee, confirmed by the Senate, rather than appointed by the Attorney General. That idea has been pitched in an unsuccessful bill known as "The Federal Prisons Accountability Act," and reform advocates want it resurrected.

Even if that change never occurs, supporters of the First Step Act say Trump should choose a reform-minded

ed permanent attorney general and Bureau of Prisons director.

"The First Step Act should drive a narrative of how we look at prisons across the nation," said the federal prison system's former director, Mark Inch, who resigned after just eight months after he clashed with former Attorney General Jeff Sessions, a First Step Act opponent. "I would think the administration would be more judicious about selecting the next attorney general."

That doesn't seem likely, given the track record of the man Trump has selected to be the next Justice Department leader. William Barr oversaw the same agency during the early 1990s for President George H.W. Bush, an era known for incarcerating thousands during the so-called War on Drugs.

Groups on the left compromised to pass the First Step Act, and Ed Chung, a vice president of the left-leaning non-profit Center for American Progress, said they cannot allow the reforms that did pass to be ignored.

"If we have a compromise of a compromise, you have to have oversight to make it work," he said.

A nonpartisan independent review committee that the First Step Act authorizes to help assess the risks of prisoners granted pre-release time will also be looked upon to keep the Bureau of Prisons accountable, as will the Judiciary Committee in the new Democratic-majority House.

Releasing elderly prisoners who are facing serious health issues is another area where the Bureau of Prisons has failed to follow the instructions of elected officials. Prisoner advocates want to see many more infirm prisoners released next year under a process known as compassionate release.

In December 2018, the Senate passed the "GRACE" Act, which allows prisoners eligible for compassionate release to petition federal court if they run into opposition from the Bureau of Prisons.

"Our legislation, which is now one step closer to becoming law, will create clear guidelines in the approval process so that we have more accountability in the system and the sick and elderly who qualify for compassionate release get it," the bill's sponsor Sen. Brian Schatz, a Democrat from Hawaii, said in a statement.



Police in rural Warren County, Kentucky, arrested a man and destroyed a tank that transported anhydrous ammonia for use in making methamphetamine, a crime that is classified as "violent" on second offense and can carry a prison term of 20 to 50 years. EDWARD LINSMIER

When "Violent Offenders" Commit Nonviolent Crimes

Embezzlement and selling drugs near a school are among the offenses some states classify as violent.

By Eli Hager

If you've been following the efforts to reduce this country's swollen jail and prison population, you've probably heard the phrase "low-level, nonviolent offenders" quite a few times.

For instance, the conservative Heritage Foundation explained in December that "our federal prisons house thousands of low-level offenders and America must do better."

But as Dana Goldstein reported in a 2015 data analysis for The Marshall Project, freeing pot smokers and shoplifters won't significantly reduce the incarcerated population—because

more than 50 percent of state prisoners are behind bars for violent crimes, including murder, kidnapping and rape.

If you left the analysis there, the prospects of significant prison reform would seem daunting indeed, given that there's just not a lot of public appetite for releasing murderers and sex offenders from lockup.

Yet in reality, many of the "violent offenders" in U.S. prisons are there for crimes that not everyone would classify as violent.

According to a Marshall Project survey of all 50 states' laws, you can get charged and convicted as a violent criminal in more than a dozen states if you enter a dwelling that's not yours. That might seem like a property crime, but it's often deemed a violent one: burglary.

Similarly, purse snatching is considered a "violent" offense in several states. So are the manufacture of methamphetamines and theft of drugs.

Our survey of statutes yielded even more surprising examples. In Kentucky, committing "Possession of Anhydrous Ammonia in an Unapproved Container with Intent to Manufacture Methamphetamine" a second time puts you in a "violent" category under the law—and you'll face 20 to 50 years in prison. In Minnesota, aiding an attempted suicide is listed as violent, as is marijuana possession (depending

on the amount). In North Carolina, trafficking a stolen identity and selling drugs within 1,000 feet of a school or playground are both violent crimes, according to the state's "habitual violent offender" statute.

And in New York, it's deemed a violent felony to simply possess a loaded gun illegally—with "loaded" defined as simply being in possession of bullets.

These crimes differ from ones like accidental vehicular homicide or "felony murder," in which the perpetrator never intended to hurt or kill someone but still did, or participated in doing so.

Those classifications aren't just semantics: When a crime is described as "violent," there are all kinds of consequences for incarcerated people. Anyone convicted of such offenses can face longer mandatory-minimum sentences, the triggering of "three-strikes-you're-out" and "habitual violent offender" penalties and, in immigration cases, are at risk of deportation.

They can also be disenfranchised at the ballot box: Some states let certain nonviolent ex-prisoners vote, but not violent ones. And they are often placed in different housing behind bars, according to their supposed violence level.

Rethinking whether these kinds of crimes should be considered violent would change the conversation about what must be done to cut the incarcerated population, some advocates of prison reform say.

Take two states—Minnesota and North Carolina—that classify several questionable crimes as violent.

In Minnesota, approximately 3,092 prisoners out of a total imprisoned population of 9,849 were locked up for "violent" crimes that, on second glance, might not seem all that violent, according to a Marshall Project analysis of July 2018 data. These include burglary—entering a building without consent and with the intent to commit a crime—and drug crimes.

In North Carolina, a significant portion of those behind bars—7,532 of about 35,700 total prisoners—were incarcerated as of 2018 for crimes deemed violent according to the state's habitual violent offender law.

These include "habitual breaking and entering," trafficking in stolen identities, embezzlement of

large amounts of money and obtaining property by false pretenses, as well as drug dealing.

If those convicted of such offenses ever get re-arrested, they could, at the bail hearing, be considered to have a violent criminal history—and therefore be sent to jail instead of getting released on bond or supervision.

If they are later released but fail a urine test, they could be returned to prison as a violent offender, even though testing positive for drugs is not a violent crime.

Of course, prosecutors often allow defendants to "plead down" their crimes, leading to the incarceration of some people for, say, burglary, when they may have actually committed robbery. But the crime they were convicted of is what counts. The justice system doesn't consider prisoners to be incarcerated for something that a judge or jury didn't find them to have done.

Moreover, prosecutors often "up-charge," too—for example, they may charge the act of getting into a bar fight as "assault with intent to kill," or say that holding someone up with a squirt gun is armed robbery.

Phillip Kopp, an assistant professor of criminal justice at California State University, Fullerton, said that at the very least, rethinking whether the crime of burglary is "violent" would reframe our understanding of who exactly is in our prisons—and who should potentially be let out.

"Burglary just means entering a structure with the 'intent' to commit some kind of crime therein—even if you step right back out and nothing else happens," he said. "It's just going inside; anything you do additionally, like robbery, would be charged as an additional offense."

We should ask ourselves why exactly that's considered violent, he said.

Kopp acknowledges that some burglaries are categorized as violent because of the implied threat of force, or the potential of inflicting psychological violence upon a victim who comes home to see that his or her personal space has been invaded.

But in this country, he pointed out, only about 3 percent of the millions of burglaries that take place every year involve any actual violence against a human being.

Thinking about how better to punish such crimes—rather than just focusing on shoplifting and low-level drug possession—might be the next step for states that are serious about prison reform.

I Wish I'd Pleaded Guilty to Murder

Exercising my right to a jury trial cost me years of my life.

By Jerry Metcalf

Back in 1995, when I was 20 and very, very stupid, I was arrested and charged with open murder. That's a term used in Michigan to mean that a prosecutor can wait to decide whether they'll try to convict you of first- or second-degree murder, or manslaughter.

Sometime early in that process, my lawyer passed on a message from the district attorney representing our great state. They wanted to know whether I'd testify against my co-defendant, he told me. Having been the one who actually committed the crime, I politely declined. I often wonder how many guilty men and women across this nation snatch up those types of deals each and every day, condemning who knows how many innocent souls to decades (or possibly lifetimes) of abuse, neglect and despair behind bars.

A week or so later, my lawyer told me the state had offered a new deal. He said they were willing to drop first-degree murder if I'd plead guilty to second-degree murder. In return, I would receive a sentence of 18 to 40 years in prison, plus two years for the firearm I'd used.

My lawyer informed me that under no circumstances was I to take such a deal.

"Why?" I asked, confused, as we sat across from one another in a filthy, graffiti-covered steel cubicle in a Detroit jail that smelled of vomit. I mean, he and I both knew full well that I had shot my victim, and that I was therefore guilty. (Per my grandmother's instruc-



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tions, I had told him everything, leaving nothing out.)

"Well, for a few reasons," my lawyer replied. He wore an expensive-looking suit, while I wore a pair of green scrubs that reeked of their previous wearer's body odor. "The state never offers you the best deal up front. The average sentence handed out for a murder plea in Detroit is probably somewhere between 10 to 15 years. And this has been all over the news. They want this case to go away, Jerry. Plus, even if you end up convicted of second-degree murder, you're still only looking at a sentence in the high teens. So why not have your day in court?"

Why not indeed?

Early on, this lawyer had informed me there was zero chance that I'd be convicted of first-degree murder, and that evidence supported this. Therefore, why wouldn't I accept my constitutionally guaranteed trial? All kids are taught in school that justice means getting a trial, right?

Back in the Wayne County jail, nestled in the heart of Detroit, older career-criminals kept urging me to negotiate the best deal possible and plead guilty. They told every first-timer this.

"Listen, young buck. If you go to trial and lose, they're going to throw the book at you. The system's broken. They can't afford thousands of trials, so they punish those who risk it and lose. That way, the next guy takes the deal—guilty or not—and is grateful for it."

But having grown up being taught

the system works, I didn't believe them. To me, at the age of 20, what they were saying sounded ridiculous.

Just to be safe, though, I asked my attorney. "If I go to trial, will I be treated more harshly for it if we lose?"

He chuckled. "No. Not you."

"What's that mean?" I asked, confused. "Not me?"

He sighed. "Look, Jerry, this is going to sound unfair, but you're white. That's one of the reasons I instructed you not to take the state's plea deal." He shrugged apologetically. "If you were one of my black clients, my advice would have been different. As a lawyer, I take every factor into account when I plan for a case. And unfortunately, more often than not, race plays a major role. For instance, we're going to ask for a Detroit jury, not a Wayne County jury, because a Detroit jury will be mostly black, and black people distrust the police and the system. And they're relying on circumstantial evidence; their case revolves around the police and their procedures."

I took my lawyer's advice, though deep down I didn't want to. I had killed a man; to me it seemed fair that I plead guilty. (Though to be honest, I was also scared to death of prison, so I clung to any hope no matter how slim.)

The lawyer called my grandmother and convinced her to convince me not to take the next offer the state made, which was even better, somewhere around 12 years. He told her that we had a great chance of winning.

So I had my day in court. And lost.

Which, honestly, came as no real surprise. Again, I knew that I was guilty.

The surprise came 30 days later when my judge sentenced me to 40 to 60 years in prison, plus two more for the gun.

I can still see the look of disgust on her face as she sentenced me. She believed that I had wasted her time. And under the current system, she was right. Those days used for my trial could have been used for someone who actually needed it.

I wish I would have listened to those career-criminals. They had known the truth, as unconstitutional as it is.

Where I disagree with the State of Michigan is the 40- to 60-year sentence. The day before trial, if I had taken that 12-year deal, the state would have considered justice served. I would have been shipped off to prison, served nine or 10 years, then paroled back into society. Yet after choosing to exercise my constitutional right to a jury trial, justice then somehow required a 42-year sentence instead?

This makes no sense from a legal, moral, or financial point of view. Just think, if I had rebuffed my lawyer, I would have been out of prison 13 or so years ago, and yeah, justice still would have been served. And I would have been able to marry, have children and build a retirement plan.

Now, when I'm released, I'll be old, childless and a financial burden on the government, both state and federal.

Please don't misconstrue this for insensitivity. I am well

I often wonder how many guilty men and women across this nation snatch up those types of deals each and every day, condemning who knows how many innocent souls to decades (or possibly lifetimes) of abuse, neglect and despair behind bars.

aware of the fact that I robbed my victim of a chance at all of those things I just mentioned. And from the bottom of my heart I am sincerely, sincerely sorry for that.

I just want to point out that this thing is broken.

For one, prosecutors offer deals for testimony leading to the easiest convictions (regardless of guilt), because it's all about conviction rates. Imagine if I'd agreed to sell out my co-defendant, a man innocent of murder, even though I knew I was guilty.

For two, judges shouldn't be forced to feel like they don't have the time to offer everyone a trial. That way, the innocent and guilty alike can enjoy the day in court they are guaranteed. The government will no longer need to decide what someone is guilty of by offering them a plea deal; a jury will decide.

Smarter minds than mine will have to figure out how to make this all work, but I suspect it will come down to more money for judges and juries and a lot less prosecution of insanely stupid laws. Focus on the murders, I say.

The true experts are those of us who have lived through it. Been mangled by it.

Hell, my schedule is open for the next decade or so.

Jerry Metcalf, 44, is incarcerated at the Thumb Correctional Facility in Lapeer, Michigan, where he is serving 40 to 60 years for second-degree murder and two years for a weapons felony; he was convicted of both in 1996.

Can't Afford a Lawyer?

Civil representation is too expensive for many, but Washington state has one solution.

By Christie Thompson

In 2017, 70 percent of low-income households in America had some kind of civil legal problem, ranging from divorce to a housing dispute, according to the nonprofit Legal Services Corporation. But in the civil system, there is no guaranteed right to representation. That means families living near the poverty line handle the vast majority of those cases—86 percent—with little or no professional legal help to guide them.

This civil legal system "crisis", as advocates call it, has sent states scrambling for solutions. Washington has taken the unusual approach of creating an entirely new legal position, one that can help clients with straightforward legal problems for a fraction of the cost. The new "legal technicians", the first of whom were licensed in 2015, go beyond a paralegal and don't need a lawyer's oversight to offer legal advice. They are to the legal field what a nurse practitioner is to medicine, a triage model that may soon expand to several other states.

Attorney Steve Crossland, former president of the Washington State Bar Association, hoped creating something like a legal technician would cut down on the fake lawyers and "notaries" who

were selling cheap divorces, wills and other legal contracts with no expertise. Crossland saw a huge need for more affordable legal help that was still subject to government oversight.

"It was designed to make sure that people who were delivering these services were qualified and regulated," he said. "In the best of all possible worlds, it would be great if everybody had access to a full attorney. But it isn't going to happen. We're hoping the technicians will be able to provide the services at a price that consumers can afford."

The new position, formally titled a "limited license legal technician" or LLLT, requires an associate degree or higher, and another year of online classes focused on a specific practice area. Before receiving their license, each technician must also complete 3,000 hours of supervised legal work as a paralegal or assistant.

Such professionals still have significant restrictions. They can't appear in court or communicate with opposing counsel, rules that licensed technicians are trying to loosen. They can only address family law matters, such as child support, divorce or protection orders in domestic violence cases. The Washington State Bar Association is now considering approving them to work on consumer debt and other financial cases.

The line between the civil and criminal justice system is blurry: Unpaid fines, fees and child support can land someone in jail. It may take a civil lawsuit to fight the fallout of a criminal conviction or clear a record. And a criminal arrest can lead to an eviction hearing and homelessness. That overlap makes it even more important for someone to have legal help in civil matters, advocates say.

Some worry, however, that anything less than a fully licensed attorney won't get clients the justice they deserve. "We advocate for full representation because we've seen how effective it is. The data on alternatives like these programs is still pretty limited," said John Pollock, coordinator for the National Coalition for a Civil Right to Counsel. "The concept is interesting, but we don't know yet if it's going to be a meaningful contributor to the problem."

Jen Petersen, of Bellingham, Washington, was the fourth LLLT to receive her license, after working as a paralegal for 16 years. "It was just attractive to me to be able to help people navigate a really complex legal system. I got divorced myself when I was 25. ... I know how difficult and scary it is," said Petersen, who works within a law firm with several attorneys. "The bulk of my clients wouldn't have been able to hire an attorney. My hourly rate is half of what our family law attorney's is." LLLTs often serve families with a low to moderate income who can't pay for a full lawyer but might make too much to qualify for free legal aid.

The Washington program has faced pushback from some family lawyers in the state. "While there is some significant training, it's not what I would call adequate," said Doug Becker, a longtime family lawyer in Seattle and co-founder of the Domestic Relations Attorneys of Washington. Becker also questions whether for-profit businesses can serve the state's poorest. "It's not a social services agency."

Immigration lawyers have also resisted proposals to let technicians work in their field, despite the immense need for representation in such cases. In a 2015 report to the State Bar Association, the Washington chapter of American Immigration Lawyers Association said they "overwhelmingly oppose" the idea, given the ever-changing, complicated nature of immigration law.

Multiple states are now adopting similar programs to help fill the gap in legal aid. In Utah, "licensed paralegal practitioners" will likely begin this fall helping clients facing eviction, debt collection and family law issues. The Oregon Bar Association may soon create its own limited license position, and roughly six other states are assessing a similar path, Crossland said.

"We have civil courts where three-quarters of the litigants are there without counsel or with any legal help at all. That's not what the system was designed for," said Martha Bergmark, executive director of Voices for Civil Justice, a Washington, D.C.-based non-profit focused on expanding civil legal aid. "This is a moment where there's recognition that we have a problem, and I think LLLTs are a part of the solution."

Took a Plea? Brooklyn's District Attorney Will Support Your Parole

Most prosecutors automatically oppose parole requests.
Not Eric Gonzalez.

By Tom Robbins

In 1996, when Brooklyn District Attorney Eric Gonzalez was just starting out as a junior prosecutor, his younger brother was shot and killed in the Bronx.

"I know how much the loss of my brother impacted my family," said Gonzalez, who was 27 at the time. "My father never got over it."

When the man convicted of the shooting came up for parole after serving 10 years for manslaughter, Gonzalez's father told the parole board he opposed it. Release was denied. Two years, later, however, the board voted to grant the parole.

"Ironically, when that process was over," Gonzalez said in a recent interview, "knowing that this guy was punished and was put through the system, and my father didn't have to go to parole hearings anymore, there was a sense of closure. I believe in the rule of law and that is what the law allowed for, and we have moved on with our lives."

In the 18 months since he was elected the borough's chief law enforcement officer, Gonzalez has rarely spoken of that personal tragedy from almost a quarter of a century ago. But he cited the experience as one that has helped shape his thinking as he has wrestled with how his office, the state's second largest, should handle those it convicts of serious crimes after they go to prison.

Prosecutors around the country almost always turn thumbs down on parole requests. But at his office, Gonzalez plans to change that.

In a memo this month to the state's



Brooklyn District Attorney Eric Gonzalez says his office plans to "cease our previous practice of ordinarily opposing parole." GEORGE ETHEREDGE FOR THE MARSHALL PROJECT

Department of Corrections and Community Supervision, which oversees both the 47,000 men and women in the state's prisons as well as another 36,000 who are under post-release supervision, Gonzalez announced that his office will "cease our previous practice of ordinarily opposing parole."

Instead, Gonzalez wrote, his office will now consent to parole at the initial hearing for all those who entered into plea agreements—as people do in 90 percent of cases—once they have completed their minimum sentence, "absent extraordinary circumstances and subject to their conduct during incarceration."

For people who were convicted at trial, the DA stated, his office will for the first time consider supporting parole for individuals who were age 23 or younger and sentenced to lengthy prison terms.

Gonzalez will also make it a policy for his office to seek the minimum probation and parole required by law. Prosecutors seeking lengthier terms will now have to state their reasons in writing to a supervisor, he said.

"If they committed a crime, they should be punished," said Gonzalez. "But shouldn't we be reserving the maximum supervision for the person we are saying is the biggest threat?"

Gonzalez said he recognized that opposition to his reforms is likely from police and others. "I view my job holistically," he said. "I believe it is about public safety, but also

about promoting trust in our criminal justice system.”

By law, New York’s parole board must solicit statements from crime victims, as well as a recommendation from the district attorney’s office that won the original conviction.

“It’s often a form letter restating the crime and saying the applicant needs to remain in prison,” said Robert Denison, who served as chairman of the state’s Board of Parole under former Gov. George Pataki.

Gonzalez wrote many such letters himself. At the end of a trial, he said, he was told to draft a letter for the file recommending parole be denied at hearings many years in the future. Parole letters for defendants who had pleaded guilty were even more perfunctory. Most, Gonzalez said, were written by summer college or law school interns.

Since then, however, leadership has changed in the Brooklyn DA’s office, and its perspective has shifted. It is now nationally renowned for its efforts to redress wrongful convictions. A unit established by Gonzalez’s predecessor, Kenneth Thompson, has reversed convictions for 25 individuals since 2014.

When Thompson died of cancer, Gonzalez, who was Thompson’s top deputy, stepped in as interim DA. At the time, many expressed concern that the low-key career prosecutor, with no political experience, might jettison Thompson’s reforms. But since winning election in November 2017, becoming the state’s first elected Latino district attorney, Gonzalez, who is 50 years old and was raised in tough sections of Williamsburg and East New York, has embarked on his own reforms, including changes to bail and prosecution policies.

His new parole effort, he said, will be merged with the conviction review unit in a new Post-Conviction Justice Bureau. The bureau will also assist in helping people seal old criminal records and address applications for clemency received from the governor’s office.

“To continuously keep people in jail for terms longer than they need to be in there, simply as more punishment, is unjust and unfair,” Gonzalez said. “We made a deal with them

that after 15 years or 20 years or whatever the number, they

would be eligible to get a fair hearing on parole, and largely they are not.”

Prosecutors, he said, “were still putting over-emphasis on the nature of the crime in ways that are unfair because the person can never do anything about the nature of the crime.”

The new policies have the potential to increase dramatically the number of men and women from Brooklyn who get released from prison. The borough sends the second highest number of people to prison, after Manhattan, among state counties. Last year, 832 from Brooklyn went to prison for new convictions, while 1,251 who were convicted in the borough came home. About 5,000 men and women remain in state custody who were convicted in Kings County, a little more than 10 percent of the prison population.

The parole board has also been changing; last year, it approved 44 percent of those considered for parole, the highest rate in more than a decade.

Eugene O’Donnell, a former assistant DA in both Brooklyn and Queens who is now a professor at John Jay College of Criminal Justice, said that routinely denying parole was a way to avoid blame if the person was released and committed another crime.

But O’Donnell, who also spent three years as a New York City police officer, cautioned against a policy that presumes that all those who have served their minimum sentences are ready to return safely to the streets. “Replacing a no-need-to-think blanket policy of incarceration with a no-need-to-think blanket policy of relaxation of accountability is a mistake,” he said. “If anybody thinks there aren’t people who are bad to the bone walking around Brooklyn they are naïve.”

Tali Farhadian Weinstein, the general counsel for the Brooklyn DA who helped formulate the new policies, said the office will keep careful watch for those potential problems. “It is not this reckless, ‘just open the door to our prisons’ approach,” she said. “If we think it is justified for public safety, there will be times when the right thing to do will be to recommend against parole.”

Once implemented, Gonzalez’s new parole policies will help point the way for others, said Miriam Krinsky, who heads the Los Angeles-based Fair and Just Prosecution, a group that aids

newly elected district attorneys. “We are going to start to see this become the gold standard as well for how we think about correcting past injustices,” she said, “and having a broader lens on what the responsibility of the DA is to do that.”

A Dangerous Brain

Can neuroscience predict how likely someone is to commit another crime?

By Andrew R. Calderon

In 1978, Thomas Barefoot was convicted of killing a police officer in Texas. During the sentencing phase of his trial, the prosecution called two psychiatrists to testify about Barefoot’s “future dangerousness,” a capital-sentencing requirement that asked the jury to determine if the defendant posed a threat to society.

The psychiatrists declared Barefoot a “criminal psychopath,” and warned that whether he was inside or outside a prison, there was a “one hundred percent and absolute chance” that he would commit future acts of violence that would “constitute a continuing threat to society.” Informed by these clinical predictions, the jury sentenced Barefoot to death.

Although such psychiatric forecasting is less common now in capital cases, a battery of risk assessment tools has since been developed that aims to help courts determine appropriate sentencing, probation and parole. Many of these risk assessments use algorithms to weigh personal, psychological, historical and environmental factors to make predictions of future behavior. But it is an imperfect science, beset by accusations of racial bias and false positives.

Now a group of neuroscientists at the University of New Mexico propose to use brain imaging technology to improve risk assessments. Kent Kiehl, a professor of psychology, neurosci-



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ence and the law at the University of New Mexico, said that by measuring brain structure and activity they might better predict the probability an individual will offend again.

Neuroprediction, as it has been dubbed, evokes uneasy memories of a time when phrenologists used body proportions to make pronouncements about a person's intelligence, virtue, and—in its most extreme iteration—racial inferiority.

Yet predicting likely human behavior based on algorithms is a fact of modern life, and not just in the criminal justice system. After all, what is Facebook if not an algorithm for calculating what we will like, what we will do and who we are?

In a recent study, Kiehl and his team set out to discover whether brain age—an index of the volume and density of gray matter in the brain—could help predict rearrest.

Age is a key factor of standard risk assessments. On average, defendants between 18 to 25 years olds are considered more likely to engage in risky behavior than their older counterparts. Even so, chronological age, wrote the researchers, may not be an accurate measure of risk.

The advantage of brain age over chronological age is its specificity. It accounts for “individual differences” in brain structure and activity over time, which have an impact on decision-making and risk-taking.

After analyzing the brain scans of 1,332 New Mexico and Wisconsin men and boys—ages 12 to 65—in state prisons and juvenile facilities, the team found that by combining brain age and

activity with psychological measures, such as impulse control and substance dependence, they could accurately predict rearrest in most cases.

The brain age experiment built on the findings from research Kiehl had conducted in 2013, which demonstrated that low activity in a brain region partially responsible for inhibition seemed more predictive of rearrest than the behavioral and personality factors used in risk assessments.

“This is the largest brain age study of its kind,” said Kiehl, and the first time that brain age was shown to be useful in the prediction of future antisocial behavior.

In the study, subjects lie inside an MRI scanner as a computer sketches the peaks and troughs of their brains to construct a profile. With hundreds of brain profiles, the researchers can train algorithms to look for unique patterns.

The algorithms, trained on these brain scans, run tens of thousands of patterns looking for a configuration that successfully identifies a fact about the subject—say, the age of the individual.

The algorithm is then used to test an entirely different population with known rearrest records and asked to calculate the likelihood that they were rearrested.

The researchers showed that reduced gray matter is closely connected to recidivism, confirming that younger brains are at higher risk of reoffense.

The team also tried to pinpoint specific parts of the brain that might influence criminal behavior. They zeroed in on irregularities in areas of the brain associated with empathy, moral decision-making, emotional processing

and the interaction between positive and negative reinforcement in guiding actions. “These inferred limitations,” wrote Kiehl, “might contribute to poor decision-making and poor outcomes.” In other words, crime.

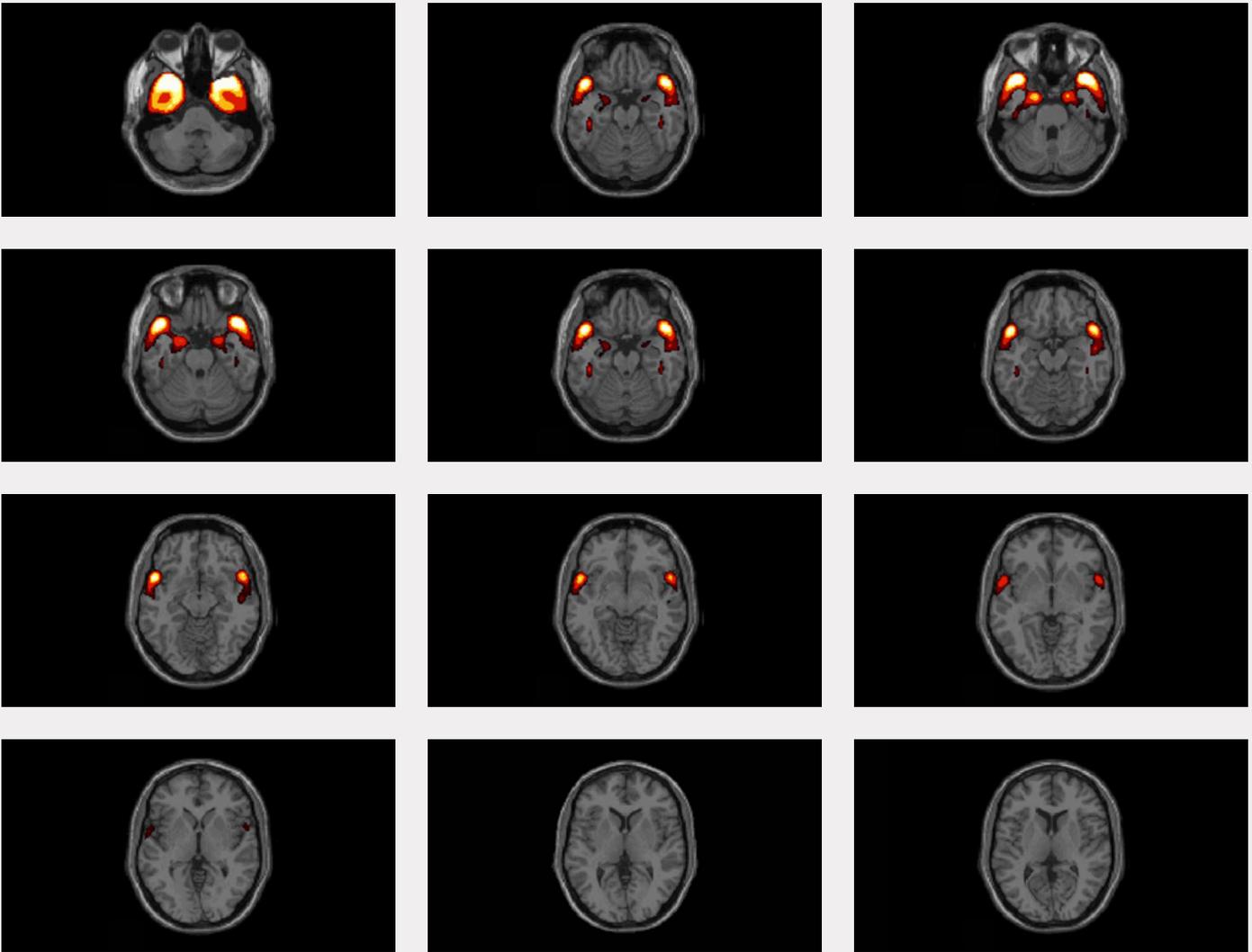
In an interview, Kiehl said that “brain imaging can’t tell you with 100 percent accuracy what an offender will do,” and added that, “neither can a pen-and-paper risk assessment.”

Over the past two decades, brain scans and other neuroscientific evidence have become commonplace in courtrooms. So much so that a defendant can file an “ineffective assistance of counsel” claim if his or her lawyer fails to introduce relevant brain tests. And defense lawyers ordinarily submit brain imaging to bolster claims of their clients’ incompetency or insanity.

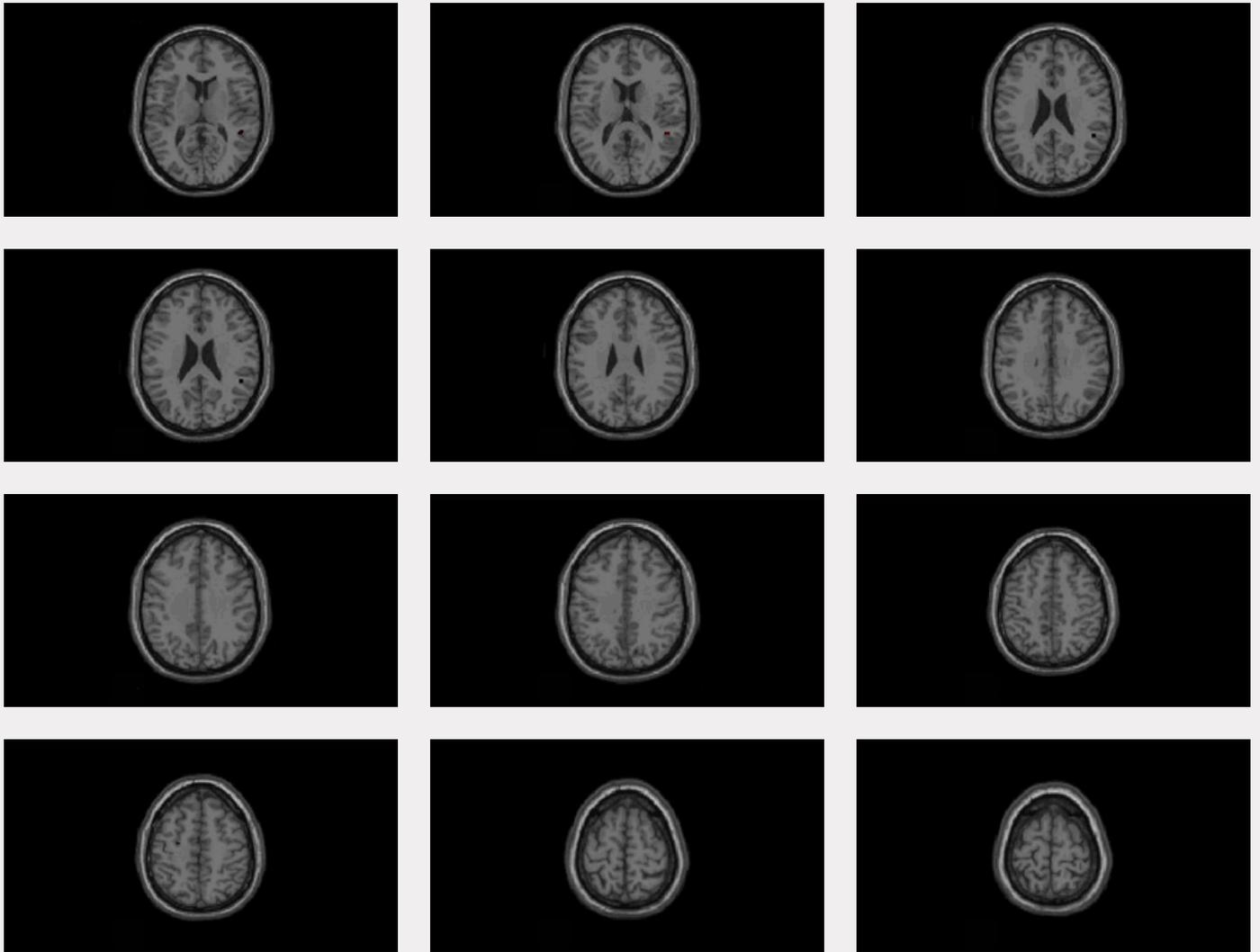
Still some legal scholars and attorneys decry the growing presence of neuroscience in courtrooms, calling it a “double-edged sword” that either unduly exonerates defendants or marks them as irredeemable future dangers.

“But that’s not right,” said Deborah Denno, a professor and director of the Neuroscience and Law Center at Fordham University Law School, who conducted an analysis of every criminal case that used neuroscientific evidence from 1992 to 2012. Her analysis showed that brain evidence is typically introduced to aid fact-finding with more “complete, reliable, and precise information.” She also showed that it is rarely used to support arguments of future dangerousness.

To date, neuroprediction has not been admitted into the courtroom or parole hearings. Some scholars, 15



Scans showing parts of the brain with gray matter volume highlighted. In the study, the researchers confirmed that younger brains have reduced gray matter volume, which scientists think increases the probability of antisocial behavior. COURTESY OF KENT KEIHL AT THE MIND RESEARCH NETWORK





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like Thomas Nadelhoffer, a fellow at the Kenan Institute for Ethics at Duke University who popularized the term neuroprediction, argue that the science is reliable enough to integrate with other risk assessments.

The main obstacle, Nadelhoffer said, is reluctant defense attorneys who fear branding their clients as biologically predisposed toward crime. "Whereas I see it as a mitigating factor," he said, a jury might not—reasoning that if the problem is in your brain, "Well, then we better lock you up."

Not all experts agree on the state of the art, however. "There is much research afoot, but the science of neuroprediction is not ready for prime time," said Francis X. Shen, a senior fellow in law and neuroscience at the Harvard Center for Law, Brain, and Behavior. He said that the current predictive value of biological indicators is overstated.

Even if neuroprediction were accurate enough to be accepted in a courtroom, some question whether judges are properly trained to interpret scientific and statistical evidence. Judge Morris Hoffman, who sits in Colorado's 2nd Judicial District and was among the first members of the MacArthur Foundation Research Network on Law & Neuroscience, says that tools like neuroprediction could be a "hazard" in the hands of untrained judges. "We judges can become over-reliant on statistical tools because they are shiny and new," he said.

Federica Coppola, a presidential scholar in society and neuroscience at Columbia University, contends that neuropredictions of future behavior could pose a threat to

civil liberties and privacy.

Coppola proposes using a defendant's brain profile not to mete out punishment, but rather to design alternative sentences based on social and emotional training.

"Especially for young offenders, we can encourage growth in brain areas linked to skills like empathy or self-control," she writes. Possibly increasing their chances of staying out of prison.

What I Learned When I Googled My Students' Crimes

"I wondered if I knew more of their history if I would still view them the same way."

By Kimberly Malone

As I walked through the door of the Sing Sing Correctional Facility in New York, I was directed toward a first-floor classroom. Instead of the lines of prisoners led by guards that I'd seen at a previous facility, the hallway was swarming with men in forest-green uniforms on their way to their classes. The scene reminded me of the time between periods in high school.

The men didn't seem bothered

by a newcomer in their midst.

An organization called Rising Hope had been looking for someone with a master's degree in theology to teach one of their college-level courses inside the prison system. Originally founded by a seminary, the program offers a curriculum on Christianity from a scholarly perspective.

I'd volunteered to teach a Friday-night class at Sing Sing on spirituality.

I stepped into the classroom, where a few men were already sitting in the desks, arranged in a semicircle.

The class included 12 men of various ages, lengths of time served and faith backgrounds. That first day, we talked about how Ronald Rolheiser in his book, "The Holy Longing," says, "Spirituality is more about whether or not we can sleep at night than about whether or not we go to church."

Together we determined that our goal in the course would be to define and develop an awareness of what this statement could mean for each of us.

One of the students, Antoine, described his view of spiritual formation this way: In his estimation, 95 percent of the inmates and guards around him were caught up in "prison politics"—power moves and rumors. At the same time, he could see that 5 percent of the population managed to stay above these things. He saw individuals striving to be better by seeking knowledge and accessing their souls. He said he wasn't one of them, but he wanted to learn how to become one.

The rest of the class agreed with Antoine's assessment, though they said the number who avoided prison politics was closer to 1 percent.

In order to discuss the state of my soul in prison, it's imperative to recognize that I actually possess one in the first place.

For their first assignment, each student was to respond to the prompt, "What is the state of your soul in prison?" Some of the students groaned when they considered the task. One looked up from the page and said, "Hey! That's not easy!"

But a few themes became apparent as I read through their papers the following week. There were descriptions of how constant noise and negativity affected their souls. Others reflected on the trajectory their lives were on before prison, and how, perversely, isolation actually freed them up to notice their souls in a way they couldn't when they were on the outside.

And the majority of them pondered whether they had a soul at all, or if their

souls had been damaged, permanently or otherwise.

"In order to discuss the state of my soul in prison, it's imperative to recognize that I actually possess one in the first place," Kevin wrote. "Upon incarceration, I endured such a rapid degradation from external influences that I almost believed I was the monster portrayed on television. Being able to reflect on this now, I retain the notion that at the time I came to prison, my soul was not actually absent, but so extremely mutilated that it was no longer identifiable to even myself."

During the following class, I established an imaginary line on the floor, designating one end as "there is nothing you can do to get rid of your soul" and the other as "it is possible to lose your soul." As each student found his place along this continuum, a fairly even split emerged.

A representative of the "you can't lose your soul side" argued that it was impossible, like deciding not to breathe. "If you lose your soul you're dead," he said.

On the other side, other feelings surfaced. "At one point in my life," one student said, "if someone had told me I had to kill my mom or my sister, I would have done it without hesitation. How can you come back from that?"

Halfway into the four-month class, I went to Sing Sing's medical facility for a required TB test. As I walked through the halls with a guard, I told her about some of the engaging conversations we'd been having in our Friday-night class.

"Yeah, they do that when they're in class. That's not how they usually are," she said.

Those words nagged at me. Leaving the prison that day, I wondered what the men in my class were "usually" like. I knew that I was afforded only a narrow glimpse into their experiences, and I wondered if I knew more of their history if I would still view them the same way.

So I decided to try an experiment. As a general rule, in my years of working with the incarcerated, I have never looked up the convictions of the men in my classes: I wanted to see each person as he is and could be, not reduced to his past actions. But now, I decided to do just the opposite: look

up the crimes and media coverage of every single one of my students.

How might I react, spiritually, after learning of the potentially horrible things they'd done?

One evening, I opened my computer and entered the identification numbers of the students into New York's Inmate Lookup website. Suddenly, I saw "sex conduct-child 1st," "manslaughter" and "murder" flash across my screen.

And I saw pictures of the men I'd gotten to know dressed in state-issued jumpsuits in various courtrooms.

It was well into the night when I completed my research. I found it difficult to absorb everything I had read and seen. There was a sense of dread in the pit of my stomach. Learning these things did challenge the way I saw the men.

With one student in particular, I struggled to reconcile what I'd learned with the man I experienced in the classroom. It was Kevin. His crime was particularly brutal, while the work he turned in was particularly insightful. He'd been depicted as a monster in the news, but to me, he was thoughtful and engaged.

The following week, upon entering the classroom again, I was grateful to discover that it didn't feel any different. We quickly fell into our easy conversations. It wasn't until we approached the end of class that I could feel my heart beating as I told the students about the experiment.

I was expecting many to feel angry or complain that I had violated their privacy. Instead, a few of them said, "That's O.K." They mostly seemed surprised that I didn't know already.

One week later, just before class, Kevin approached me and in a low voice said, "I'm sorry you had to see that." To which I replied, "I'm sorry you have to live with that." It felt reassuring for him to acknowledge that he knew I knew—and at the same time I felt uneasy, wondering if he could sense that I was still processing all I'd learned.

Around that time, I began to realize that the books I'd been assigning my incarcerated students had all shared a fundamental premise that life is about cultivating joy, forgiveness, generosity and compassion.

I wondered if, in a way, I was setting these men up for fail-

ure by asking them to focus on these virtues in their prison environment—especially knowing there was so much I didn't know about life inside.

For our final assignment, I invited the men to choose a virtue the books described and translate it into their prison context. I challenged them to identify real-life ways they could practice living out such a principle in an authentic way in prison.

In a place that often mistakes kindness for weakness, some wrestled with how to practice generosity. Deshaun said he'd noticed a man who had fallen into a severe depression—and said he would from then on remind that person every single day that he mattered. Another student described how he would search for joy in little things, including waking up before everyone else to revel in a moment of silence.

Kevin reflected on the virtue of compassion. He said, "You know, when they sentenced me, they thought my punishment was that I couldn't be with my family, and I couldn't be in society. But that wasn't it. The real punishment was having to be alone with myself. *That is torment.*" Then he described the challenge of offering compassion to others in the context of having a hard time seeing *oneself* with compassion.

What does compassion for Kevin look like? We discussed. Can you offer both compassion and accountability, or are they mutually exclusive?

There are other questions in my mind as I walk away from this class, and my experiment: Are the spiritual reflections of incarcerated people credible, given what they have done?

If spirituality is about finding a peace, what if those who are in prison are precisely the ones who can help us find it? Could it be that the people locked up in our penitentiaries have something to teach us about joy, forgiveness, generosity and compassion?

And if they do, are we open to what they have to say?

Some names and identifying details have been changed to protect individuals' privacy.

Kimberly Malone has been teaching weekly classes on spirituality, financial literacy and life skills in prison and jail settings since 2015.



Theothus Carter reads with Richard Hicks, the casting director of "O.G.," during his audition for the role of "Beecher." COURTESY OF HBO

I'm in Prison— And on HBO

Theothus Carter reflects on starring in the film "O.G.," alongside Jeffrey Wright, while serving time in prison.

**By Theothus Carter, as told
to Maurice Chammah**

The new film "O.G.," which stars Jeffrey Wright and had its television debut on HBO this week, was filmed almost entirely inside Pendleton Correctional Facility, a maximum-security prison in Indiana. Wright plays a man who has spent decades inside but is about to be released, and in his final days he takes interest in a young man who has recently arrived. That young man is played by Theothus Carter, who is serving 65 years for attempted murder and other charges, and was incarcerated at Pendleton when the movie was filmed. This account of working on "O.G." is adapted from interviews with Carter, as well as letters he sent to the film's director Madeleine Sackler.

I heard about the auditions in early 2016 from a chaplain. A film crew was coming to the prison to make a movie, and they were looking for people inside to be in the film. He asked me if I signed up. He said it might be good for me.

I had never acted before. When audition day came, I woke up early—a little nervous. I had two small roles to read for, and I had read both so many times that I didn't even need the script anymore. I leaned on my confidence, and it must have gotten me through, because by the end of the audition I had been asked to read for more characters, including a major part, "Beecher," and the production people were kinda noticeably excited.

A few weeks later, I was called into the room where they usually hold parole hearings. Over Skype, the director, Madeleine Sackler, had me read some more and then asked if I wanted to play the role of Beecher. I was shaking inside. I was so happy, it was like being jolted alive back from the dead. I know I've never been dead before, but being dead has to feel like being in prison, because here it feels like you don't matter anymore. This made me feel like I mattered again.

Beecher's life was very similar to mine; it was like someone wrote a script about my life and asked me to play myself. Beecher got 50 years, and I got 65 years. We were both young, had both gotten into lots of fights in prison, had both been approached by prison gangs about joining them. In the original script, Beecher was younger, but once I was cast, I worked with the director and the script writer. We rewrote the dialogue to make it more realistic, to make it seem like Beecher had been in prison for a few years already, like I had.

I read the script over and over. I'm

in an open dorm with a lot of people, and I tried to stay away from everybody. I didn't go to the recreation building or the chow hall. I mostly ate commissary food. I didn't want any trouble; I didn't want to be the reason the project didn't succeed. Still, word got around, and people started calling me, "Movie Star."

I found that acting came naturally to me. When you go into a courtroom, you're in front of a lot of people who don't know you, and you're often wearing a jumpsuit, which makes anyone look like a criminal. But you have to give these people a glimpse of who you are in a short amount of time to show them you're not just the person the affidavits say you are. That's a lot like acting.

Before the outside actors showed up, we rehearsed for four weeks. Madeleine, the director, didn't want us to freeze once the cameras were on, so we didn't rehearse the actual movie scenes—we rehearsed scenes from other movies, like "John Q.," and did a lot of improvising. She asked us to improvise an opera about how we spent our morning. We pretended to battle with lightsabers. I told myself: There must be a reason for this. It was to make us comfortable, natural, so that it wouldn't *feel* like acting once the cameras were rolling.

People are usually intimidated to meet me, but the actors who came from the outside weren't. As we filmed, I got to know Jeffrey Wright, and I learned so many things about acting from him that are hard to put into words. I observed him closely, how he prepared for scenes, how he tried to bring out every little emotion. One time he told me to shake my leg during a scene, and it made it so much more intense. Sometimes people mistook Jeffrey for an actual guy in prison, which to me shows how much the outfits matter. That piece of cloth tells people you're guilty. When we filmed the fight scenes, I had to unlearn some of the things I would normally do in a fight, because the stunt coordinator said certain things look better on camera.

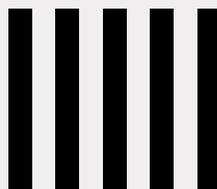
Those 15 weeks were the greatest experience of my life, save for the birth of my son. Now I sit back and wonder: What if I had gotten this opportunity on the streets, when I was out, at an earlier age? I'm from Haughville,

a neighborhood in Indianapolis where the schools never had plays or drama classes. I grew up around drug dealers, hustlers, crooked cops. Both my parents had drug habits. We were so poor that in winter we used our front porch to keep perishables from going bad, because we had no electricity in the house. Ten of us would gather around a kerosene heater. The allure of fast, easy money has a major pull when you grow up with nothing.

For many years, I thought the street life was the most exciting thing in the world. Until I met Madeleine Sackler. She discovered a talent in me that I didn't know I possessed. Film-making occupied the space in my mind that was previously occupied by the street life; it was a breath of fresh air, and it gave me a sense of hope. That's especially important in a place where most people lose their purpose for living. Making this movie showed that people are willing to give us a second chance. But you also have to be ready for that second chance, and take nothing for granted.

Shortly after we finished filming, my son was killed on the outside. I'll be dealing with this for the rest of my life. I know he's smiling down on me, and I want him to know that his mom and I love him and miss him. It's powerful to know that I was able to do something positive with my life, something he could be proud of me for while he was still alive. I dedicated the role to him.

Theothus Carter is incarcerated at Miami Correctional Facility in Bunker Hill, Indiana. "O.G." is currently streaming on HBO platforms.





"In only two states, Maine and Vermont, all prisoners are eligible to vote. However, some prisoners in Mississippi, Alaska and Alabama can vote while incarcerated, depending on their convictions. [Bernie] Sanders is the sole presidential candidate to support the idea of prisoners voting, regardless of their crimes."

"In Just Two States, All Prisoners Can Vote. Here's Why Few Do." PAGE 2

?

Thinking Inside the Box

Give these questions a try after you've read the stories in this issue. We'll include the answers in the next issue.

- 1 In what states can only some prisoners vote while incarcerated?
- 2 Vanessa Thompson participated in what popular college course offered in an Indianapolis women's prison?
- 3 What "Act" allows prisoners eligible for compassionate release to petition the federal court if they run into opposition from the Bureau of Prisons?
- 4 The Marshall Project analyzed July 2018 data and found that 3,092 prisoners locked up in Minnesota for violent crimes had crimes that did not appear to be violent. Other than "drug offenses" what other charge was mentioned as being categorized as violent but did not appear to be?
- 5 Due to the high cost of legal representation, poverty, and the civil system being void of the "right to an

attorney" rule, the state of Washington created what position?

- 6 What was the first deal offered by Michigan's prosecutor that Jerry Metcalf declined?
- 7 What will DA Eric Gonzalez do for people who were convicted at trial?
- 8 A study that analyzed brain scans for Wisconsin and New Mexico men and boys—ages 12 to 65—in juvenile facilities and state prisons found that by combining brain age and activity with psychological measures, such as _____ they could accurately predict rearrest in most cases.
- 9 During one of her prison classes, Kimberly Malone established an imaginary line on the floor, designating one end as "there is nothing you can do to get rid of your soul" and the other as "it is possible to lose your soul." Each student was asked to find his place along this continuum. What was the split?
- 10 In what room did Theodus Carter find out he had landed the role of Beecher in the HBO movie, "O.G.?"

Hello!

We are partnering with Orion Magazine to co-publish a series of essays reflecting your experience engaging with, or being cut off from, the environment. Each essay will respond to the prompt:

"What do you see through the window?"

This could be a window in a cell that looks out on the land or into a building, a window in a common space, or a remembered window from a past life.

Submissions should be sent to



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