

To: Vermont House Judiciary Committee

From: Kathy Fox, Ph.D., Sociology, UVM

Date: January 9, 2024

Subject: Research on criminal justice reform

I write as a constituent and a subject matter expert on criminal justice. I am employed as a Full Professor at the University of Vermont, but my views do not represent the University's.

I am certain that your committee, and others, want to be responsive to constituents' concerns over public safety. The public's desire for you, and for the criminal justice system, to "do something" is understandable. However, I trust you agree that any changes to laws and policies should be based on solid research rather than fear and gut instinct.

Given the current climate and tone at the Legislature, and the committee's desire to address the recent increase in crime, particularly property crime, I wanted to share some of the prevailing knowledge that exists in the criminological literature to help guide your decisions.

Pre-trial Detention¹

There are many aspects of pre-trial detention to consider. Recent research from the Harvard School of Public Policy shows that in as little as *one week* of detention, those detained experience:

- Material loss
- Social and emotional loss
- Psychological loss
- Trust in the system loss

These losses convey negative impacts regarding detainees' abilities to recover from their lives on the margins.

Moreover, the US has the highest number of detainees in the world, and detain people before trial at a rate *six times higher* than in the 1970s, when crime was lower than it is now by 40%.

Pre-detention decreases chances of future employment and *increases* the likelihood of continued police contact. In fact, a detained person is more likely to commit future crimes, and that rate increases by the length of detention.

Currently, 30% of Vermont's prison population (as of 01/09/24) is made up of detainees. In fact, in the women's prison, there are currently slightly more detainees than sentenced individuals. I would argue that we should consider that we already detain significantly more people pre-trial

¹ [Mass Incarceration & Criminilization | SPL \(socialpolicylab.org\)](#)
[The Difference a Day Makes: How Spending Even One Day in Jail Can Have Devastating Consequences | Harvard Kennedy School](#)

than we should. Given that pre-trial detention is shown to increase future crime, our detention rates could be contributing to our higher crime rates.

The concerns that naturally arise from current pending legislation (H.534) are that:

- More people will be detained, required larger prisons, or more people sent out of state
- The future of public safety will be jeopardized by a quick-fix scheme to solve a set of complex social problems
- The incredible court backlog will intensify, resulting in inadequate justice and negative impacts for those accused of crimes

Bail reform²

The research on cash bail is clear: imposition of cash bail affects BIPOC people more, lower-income more, and does not impact crime rates. Despite some popular media narratives, research that comes from reputable think tanks and schools, such as Brennan Center for Justice, John Jay School of Criminal Justice, and others, show that crime volatility did not differ in places that reformed bail. In other words, crime has risen in many places, irrespective of their use of bail or not. ***There is no evidence to support the notion that recent crime increases are a result of bail reform.***

Bail has other, unintended consequences of placing economically marginalized persons at even greater disadvantage. The extant research shows that most people turn up for their court dates, if released to communities.

Again, the frustration over people who repeatedly engage in retail theft is understandable, and we should try to affect that. However, if we rely on simple solutions, rather than efforts to combat the underlying issue that drives their criminal behavior.

The concern stems from the retreat from bail reform:

- Increased court backlog, which diminishes access to speedy trial
- Being held before trial leads to greater likelihood of conviction
- The same economic, social, and psychological losses occur as discussed above
 - There will be a disparate racial and income impact

2

Felony threshold levels³

The PEW Research Trust has found that states can safely *increase* the felony threshold for property crime. Getting a felony charge/conviction should be made more difficult not easier, as the collateral consequences that stem from a felony are well-documented and severe. PEW also found that since most property crimes are related to an underlying substance use disorder (SUD), access to drug treatment has a greater chance of reducing property crime than tinkering with charge levels.

Moreover, a felony charge for a property crime can have a 10-year sentence attached to it. Even repeated thefts would not warrant such long-term incarceration. It is a very costly measure, it is disproportionate to the harm, and would lead to demonstrably worse outcomes for the convicted, but also society at large.

If there is no evidence that a felony charge for repeated thefts would impact the crime rate (with the exception that an individual would be temporarily incapacitated), investing in desperately-needed drug treatment facilities would be more humane, more appropriate, and more effective.

A concern about increasing crimes to felony status is that it is a stopgap, extreme measure designed to interrupt crime. It is not a policy that is supported by the evidence that exists. The cost to benefit ratio is not defensible.

In conclusion, I want to reiterate that my positions on these matters stem from the evidence base. I believe strongly that sound policy can only exist when rooted in solid, verifiable, and good social science measures. I did not start my career as a criminal justice reform advocate. My sociological career and familiarity with the research evidence produced by criminologists around the country and the world have guided these conclusions.

As a survivor of a violent criminal act myself, I appreciate victims' and others' desires for safety. I advocate doing what works, rather than what "seems" like it should work, and actually produces greater harm. Tinkering with the laws and the justice system is not the answer—investing in community-based and residential mental health systems, drug treatment systems, and housing are the answer.

³ <https://www.pewtrusts.org/en/research-and-analysis/articles/2018/05/22/states-can-safely-raise-their-felony-theft-thresholds-research-shows>