WHERE AMERICANS SEE EYE TO EYE ON INCARCERATION
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INTRODUCTION
ABOUT THE HIDDEN COMMON GROUND INITIATIVE

It’s taken decades for our national politics to become as ideologically polarized and gridlocked as they are today, but it’s only recently that pundits and pollsters have started to converge on a narrative that blames the general public, instead of a flawed political system and culture, for this state of affairs. Especially since the 2016 election, a storyline has taken hold that portrays our dysfunctional national politics as a reflection of our profound divisions as a people. In this account, we’re an alienated society with no ability to understand one another, let alone find common ground or work together toward common ends.

For example, a 2016 series published by the Associated Press, *Divided America*, argued:

“It’s no longer just Republican vs. Democrat, or liberal vs. conservative. It’s the 1 percent vs. the 99 percent, rural vs. urban, white men against the world. Climate doubters clash with believers. Bathrooms have become battlefields, borders are battle lines. Sex and race, faith and ethnicity…the melting pot seems to be boiling over.”

Such rhetoric about divisions among the public has proliferated, and surely it captures something important about the contemporary United States. We are fragmented in many ways, with consequential differences, divides and disagreements that are important to acknowledge and address. But our divisions are hardly the whole story, and this rhetoric can be dangerously self-reinforcing, exacerbating the divisions it chronicles, stunting our political imagination and playing into the hands of those who would manipulate and intensify our differences to their own advantage.

The Hidden Common Ground Initiative explores a different hypothesis and possibility—namely, that as far as the broader public is concerned, there is often enough common ground to at least begin forging progress on many of the problems we face. Moreover, with some nurturing quite a bit more common ground can emerge. The initiative is concerned with locating the common ground that exists on tough issues and giving it greater voice and currency in public conversations and policy debates. And it is concerned with generating insight into how more democratically meaningful common ground can be achieved.

We believe that dispelling the myth that we are inescapably divided on practically everything can not only help fuel progress on a host of issues, but also help us better navigate our real, enduring divisions, from differing philosophies of governance to racial tensions. Hidden Common Ground aspires to tell the story of what unites us by way of concrete, actionable solutions that can make a difference in people’s lives and the fate of their communities—and eventually, perhaps, in our national politics as well.

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Finding Common Ground on Incarceration

For years, reformers have focused on two problems with the United States’ approach to incarceration:

First, an unusually large number of Americans are incarcerated compared with other nations. Second, reformers charge that our criminal justice system is too often unfair and inequitable.

Incarceration reform is unusual in today’s politics in showing signs of nascent bipartisan congressional action. But given the depths of congressional dysfunction and gridlock, and with a high-stakes election looming, that bipartisanship seems more likely to wither on the vine than bear fruit unless strong public pressure helps push progress along. Whatever happens with Congress and federal policy, there exist real opportunities today to see renewed attention and action on incarceration at the state level. That’s why we’ve chosen incarceration as our inaugural issue to explore under the Hidden Common Ground banner.

When people from different walks of life sit down and talk about criminality and incarceration, how do they process the problem and think about solutions? Our approach to exploring the public’s views on the topic began with a review of existing survey data and proceeded to three focus groups in diverse locations with ordinary Americans, with roughly equal numbers of Republicans, Democrats and Independents. This report concludes with implications and reflections on the solutions that are most and least likely to garner public support and with ideas for productively engaging the public on the topic of incarceration.

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5 For more details about the methodology, see page 17 of this report.
MAIN FINDINGS
Participants felt incarceration serves important functions, such as keeping dangerous people off the streets, but agreed that the criminal justice system can be unfair and make mistakes.

The United States has the largest incarcerated population in the world.\(^6\) Congress members from both parties have worked on bills designed to address the rate of incarceration in the United States.\(^7\) However, in our focus groups, participants of different ages, races and political affiliations did not see the rate of incarceration in the United States as a problem per se, even when we showed them a chart illustrating the rising rate of incarceration over time and engaged them in a conversation about the size of the U.S. prison population. This does not mean participants were closed to the idea of reducing the prison population, but the fact that we imprison so many people was not how they framed the problem or entered the conversation.

In our groups, people often described imprisonment as necessary to keep dangerous people off the streets and as a way to protect law-abiding citizens by isolating criminals from the general public. They typically agreed that people who commit crimes deserve imprisonment.

A 2016 survey found that 51 percent of registered voters say there are too many people in prison in the United States, while 19 percent say there are not enough people in prison and only 8 percent say the number is about right. Nearly a quarter of registered voters—22 percent—say they do not know or have no opinion. However, in our focus groups, participants did not initially frame the scale of the prison population as a problem. They focused first on what they saw as the problem of excessive criminal behavior.

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8. In some instances, quotations have been minimally edited for clarity.
While participants emphasized the importance of incarceration, especially for violent crimes, they were also nearly unanimous in the belief that the criminal justice system makes mistakes and can be biased and unfair, especially to lower-income people and people of color.

Not surprisingly, recent survey research has shown that more black than white people perceive racial bias in the criminal justice system. A 2016 Pew Research Center survey found that 75 percent of blacks say blacks are treated less fairly than whites in the court system, but only 43 percent of whites agreed with the sentiment.9 While we heard broad agreement in our focus groups that the criminal justice system can treat people of color unfairly, people likely vary by race in their perception of the prevalence and intensity of the problem.

Some participants also described the criminal justice system as financially predatory, which they viewed as another way in which people ended up being punished more than they should be.

Overall, while participants saw prison as an important institution that keeps communities safe, they also saw room for improvement, including making the system fairer and steering more people away from crime.

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First and foremost, participants in our focus groups tended to think of crime as a matter of bad decisions due to a combination of how people were brought up and the conditions of their lives. And they viewed prevention as the best medicine.

People often contrasted their own hard work with what they described as the laziness or immorality of criminals, the implication being that if kids were raised well—in strong families and communities—they would be less likely to turn to a life of crime.

“Growing up, if I wanted something I had to work hard to get it. But now these kids everything is handed over to them. No morals anymore.”
**Suffolk County, NY; in her 40s; black; Independent**

“Some of my family members were on drugs. They tried to stay off of drugs and do what’s right. But their friends pull them back in. I don’t think people ever want to end up in prison. They just keep doing things wrong until they finally end up in prison.”
**Franklin County, MO; in her 60s; white; Republican**

“The moral values have been lost. Social media, rap videos, rock-and-roll videos, all this kind of stuff, is raising the kids, and putting ideas in their head instead of their moral values that should be instilled at home.”
**Franklin County, MO; in his 40s; black; Democrat**

“I grew up with a good moral family and a good moral compass. I think it really boils down to the family.”
**Suffolk County, NY; in his 30s; white; Republican**
They also discussed how poverty and severely limited economic opportunities can lead people to commit crime.

“The rich are getting richer, but the poor are getting poorer. And in that case the crime rates have risen in areas, and perhaps that’s what’s causing more arrests and more jail time.”

_Suffolk County, NY; in his 60s; Hispanic; Democrat_

“Loss of freedom is not always punishment to criminals. They already felt trapped wherever they were. In their home, in their neighborhood, in their community.”

_Franklin County, MO; in her 60s; white; Republican_

“Some of these young guys have no choice at all. There’s nothing to eat in the house. Their mom sold the food stamps for crack. Dad’s in jail. And they might get a little help from a grandmother who’s probably on fixed income herself and barely making it. I just think this story happened too many times.”

_Franklin County, MO; in his 40s; black; Democrat_

Many thus saw building opportunity and improving education as key ways to prevent people from committing crimes, with several citing vocational education and job training as a way to steer young people clear of criminal behavior and get them on the road to a decent life.

“To keep these people from going to jail, they need a little four-letter word called ‘jobs.’”

_Franklin County, MO; in his 50s; white; Independent_

“A lot of kids these days don’t go to college. So how about bumping up the job placement programs that are offered not only in high schools so that you’re steering people in the right direction and that they’re not having to resort to robbery or stuff that will veer them off the right path?”

_Suffolk County, NY; in her 30s; white; Independent_

Several also noted that it was difficult for formerly incarcerated people to find jobs, which could lead them to commit crimes again. A formerly incarcerated man in one group explained:

“Every place I went, you know, they were telling me, ‘Your criminal history is too recent.’ I would admit I was tempted back into crime a little bit because like $8 an hour in a household of three people, it’s just not enough.”

_Hamilton County, OH; in his 50s; black; Independent_
For drug crimes, and possibly some other nonviolent offenses, alternatives to incarceration made good sense to participants. But they were unwilling to accept alternative sentencing for violent crimes.

When it came to murder and other violent offenses, participants routinely advocated long sentencing, capital punishment and harsh prison conditions—consistent with their idea that prison keeps communities safe from dangerous people. Participants often used violent crime as a point of reference when discussing the appropriateness of sentencing for other types of crime.

“It’s unfair and gives people over-the-top time for the littlest stuff and people that do murders can get off or get three years, maybe.”

Hamilton County, OH; in her 20s; black; Democrat

“I don’t agree with some of the penalties, like they’re trying to give drug dealers sentences of like life in prison and treating them as murderers.”

Hamilton County, OH; in her 40s; black; Democrat

“You see one person kill somebody and get 10 years, and somebody else do something that’s really not harmful to another individual getting just as much penalty.”

Franklin County, MO; in her 50s; white; Republican

We asked participants about alternative sentencing, meaning approaches to addressing criminal behavior other than prison time. When it came to nonviolent offenses, focus group participants were less punitive and often willing to entertain alternatives to incarceration. Alternatives resonated with participants in these groups as a viable, pragmatic response to some types of crime.¹⁰

“If they’ve never come in contact with the justice system, they made a mistake, they’ll learn their lesson by some sort of alternative form of punishment. But not jail.”

Suffolk County, NY; in her 30s; white; Independent

“Something like that where she was wrong, but she wasn’t a violent offender, someone like that you could say maybe she deserves to be going into this more lenient kind of system.”

Suffolk County, NY; in his 30s; white; Republican

The views we heard in these focus groups echo findings from a 2016 survey that found that 78 percent of registered voters strongly or somewhat supported reducing prison time for people who committed a nonviolent crime and had a low risk of committing another crime. But only 29 percent of registered voters strongly or somewhat supported reducing prison time for people who committed a violent crime and had a low risk of committing another crime.11

For drug-related offenses in particular, addiction treatment and counseling struck participants as more constructive than incarceration or as important adjuncts to incarceration.

“For menial crimes like drug abuse and drug dealing, give these people an evaluation, like where did you start thinking that this was the path that you needed to go down? What pushed them to make this choice?”

Hamilton County, OH; in his 50s; black; Independent

“For a lot of the littler cases, like drug charges, instead of sitting in jail they can find other ways to help people.”

Hamilton County, OH; in his 20s; white; Democrat

“I think that the counseling people who interact with the criminals need to try to get these people to change their ideas about how they were brought up, to be viable in society.”

Franklin County, MO; in his 50s; white; Independent

Participants certainly felt that there should be consequences for nonviolent crimes and first-time offenders, but not necessarily strongly punitive ones with long periods of incarceration. Some framed the punitive aspects of drug sentencing as counterproductive, like punishing an illness.

“I don’t think drug abuse should be a charge. You’re getting years for being an addict. That’s ridiculous.”

Hamilton County, OH; in her 40s; black; Democrat

“If you’re slinging dope, that’s your job. Right? You need a job. We’re going to make you get a job, and you’re going to learn from it.”

Franklin County, MO; in his 50s; white; Independent

“The need is for rehabilitation, actual correction and not just punishment, not just taking somebody and sticking them in prison but actually helping them to improve their life.”

Hamilton County, OH; in her 60s; white; Republican

Participants also raised the topic of mental health more generally, with some suggesting that treatment might be a viable path toward preventing incarceration and recidivism.

“When my brother-in-law was mentally ill, they would put him in jail and, you know, he was mentally ill, he didn’t belong in jail, it’s really no help.”

Hamilton County, OH; in her 60s; white; Republican

“If their parents were getting treatment rather than being in jail, they could get parenting classes, drug treatment, a job-training program.”

Hamilton County, OH; in her 40s; black; Democrat

“I think that the counseling and the people that really interact with the criminals, or the inmates, or the people that are incarcerated, need to be counseled, and try to get these people to change their ideas about how they were brought up to be viable in their society.”

Franklin County, MO; in his 50s; white; Independent
Eliminating mandatory minimum sentences was an unresolved issue for participants.

One of the policy ideas we explored in the focus groups was repealing mandatory minimum sentencing laws. These laws require judges to sentence people convicted of certain crimes to serve at least a minimum, specified length of time in prison. Proponents advocate the use of mandatory minimums out of concern for excessive plea bargaining and judicial leniency. Reformers who want to do away with mandatory minimums argue that they create injustices by imposing overly harsh sentences without respect for the particulars of convicted people’s lives and crimes.

A 2016 survey found that 77 percent of registered voters would find it acceptable if “instead of mandatory minimums, judges have the flexibility to determine sentences based on the facts of each case.” However, based on the conversations in these focus groups, we question the solidity of those findings. Mandatory minimum sentencing laws and the implications of eliminating those laws appeared to be issues that focus group participants had not thought about much and did not understand well. This suggests that findings regarding public opinion on mandatory minimums may be unstable and should be interpreted with caution.

As we explained the debate over mandatory minimums to focus group participants, they often expressed concern that eliminating mandatory minimums would actually exacerbate the bias and unfairness they perceive in the criminal justice system by making people even more subject to the whims of judges and lawyers.

“I don’t like the idea of a judge being able to say this person gets no time for the exact same crime that this other person might have got a year for. I don’t like there being that much gray area.”
Hamilton County, OH; in her 40s; black; Democrat

“I don’t think it’s fair because there are a lot of lawyers that are friends with judges and they pick certain judges for their cases.”
Suffolk County, NY; in her 40s; white; Republican

“I would be worried that the judge would have the power go to his head.”
Franklin County, MO; in her 60s; white; Republican

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Some of our participants figured that flexibility in sentencing would enable judges to consider the unique circumstances of each case.

“If judges got into that position of power, they should be able to discern whether or not a person can be rehabilitated or not.”
Franklin County, MO; in her 60s; white; Republican

“The judge has been a lawyer, and they’ve been around a while, and they’ve seen a lot of the cases. They’ve had experience. They’ve got a tough job. So we’ve got to give the judges a little bit of leeway.”
Franklin County, MO; in his 50s; white; Independent

A few participants were familiar with the argument that mandatory minimums can be applied in ways that are unreasonably harsh or that reinforce racial inequities.

“It’s an overzealous punishment to sell weed to your friends and end up in jail for two to 10 years.”
Franklin County, MO; in his 30s; white; Democrat

“Crack is mainly bought and sold in the urban, black areas, and the powdered cocaine is normally sold and consumed in the white areas. You can get caught with 20 times the amount of powdered cocaine than the one little piece of crack, and get 10 years. It’s an imbalance there.”
Franklin County, MO; in his 40s; black; Democrat

Overall, we detected limited understanding of mandatory minimums and mixed reactions to the notion of eliminating them.
IMPLICATIONS AND REFLECTIONS

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This analysis of new and existing research on public attitudes toward incarceration suggests concrete guidance on solutions that are most and least likely to garner public support, as well as how to productively engage the public on the topic. Let’s start with the most obvious pillars of public support. Where is there a green light for change as far as the public is concerned?

**GREEN LIGHT: Where does the public generally agree?**

Based on our focus groups and reading of the survey data, we believe there is significant and fairly stable common ground among the American public in support of reforms to prevent unnecessary, unhelpful or unfair incarceration.

For the public, prevention is the best medicine, and we find solid support for measures that keep young people out of trouble in the first place by instilling strong values and a firm foundation for life at home, in school and in communities. We also find support for measures to increase economic opportunity, so that, as one of our focus group participants put it, fewer people feel trapped.

The public also shows significant support for alternatives to incarceration and treatment when it comes to nonviolent drug offenses and possibly some other nonviolent crimes. Violent crimes were a pivot point in the public’s thinking—cross that line and people tended toward harsher punishment, as a matter of public safety and justice. But it was clearly drugs that were on people’s minds, likely in part as a result of the opioid crisis roiling families and communities across the nation.

Finally, our research shows that the public is concerned about bias in the judicial system, with a strong consensus that some people, such as the poor and people of color, are significantly disadvantaged in getting a fair shake. While we did not have time to delve into this topic with great specificity, we believe it likely that measures to lessen bias and level the playing field could, if properly framed, garner significant public support.

In all of these instances, people seemed animated by a set of core values and orientations. *Fairness* was a persistent theme in participants’ comments about bias in the criminal justice system. Fairness mixed with a kind of *pragmatism* also seemed apparent in people’s observations that we should ensure kids are raised well and that there are more good jobs if we want to see less criminal behavior. Commonsense pragmatism also seemed at work in participants’ widely shared sense that what’s being done to combat drug abuse is not working and in their willingness to experiment with other approaches—as long as public safety—another fundamental value in these conversations—is not compromised. As noted, people did not support leniency for violent offenses but were more open-minded for nonviolent crimes.
Despite some survey evidence to the contrary, we found people’s thinking about ending mandatory minimum sentences to be ambivalent and generally uncertain, too much so to be a reliable foundation of public support at this point in time. Our participants raised all kinds of ifs and buts about the idea. Most reformers are concerned that mandatory minimums are unfair because they lead to overly long and harsh sentences. But many of our participants wondered if eliminating mandatory minimums might exacerbate the unfairness they perceive in the criminal justice system by giving biased judges too much leeway, potentially letting people with money get away with shorter sentences.

Our take is that people need to understand mandatory minimums more fully and wrestle with the pros and cons more completely before they’re likely to settle into a stable position on this potential area of reform. That’s why we feel surveys indicating support for reform of mandatory minimum sentencing should, for the time being, be taken with a grain of salt.

Some countries hand out significantly shorter sentences for violent crimes than is the case in the United States, and some criminal justice experts believe it will be necessary to move things in this direction if our nation is to make a major dent in its incarceration level. Our research suggests this would be a very tough sell when it comes to the public. People view incarceration as a necessary means of keeping dangerous people off the street and as a matter of justice for serious, violent offenses.

Some might highlight the fact that public support for the death penalty has fallen to its lowest point in 45 years (although 55 percent of Americans still support it)—perhaps suggesting that the public might, over time, become open to less harsh sentencing even for violent criminals. This is of course possible, but we suspect that the “get dangerous people off the streets” reasoning that comes across strongly when people talk about violent crimes would be a difficult hurdle for those who favor shorter sentences for such transgressions. It is, however, possible—and this is pure speculation on our part—that dramatic, demonstrable breakthroughs in rehabilitation would loosen this position and open the public’s mind to a less harsh approach to incarceration even for violent offenders.
ENGAGING THE PUBLIC, IMPROVING THE CONVERSATION

As noted, an area where the public has yet to come to judgment is mandatory minimum sentencing. Experts who oppose mandatory minimums worry about it being a blunt instrument that leads to overly long and unfair sentencing. Our focus group participants expressed a variety of perspectives on eliminating mandatory minimums, but it was clear that they had not really thought much about the issue. This is an area where people need to learn more and tease apart the various arguments for and against before they’re going to settle into a stable position one way or another. Public education and public engagement that stimulate such thinking in a fair-minded way can help the public come to sounder judgment on this question.

More generally, in engaging the public on incarceration reform, it is important to note that most people view the issue less as “there are too many people in prison” and more as “there are some people who should not be there”—because they were incarcerated out of bias, which is unfair; or a nonviolent drug offense, which is not helpful; or a bad upbringing, which is preventable. People want to prevent wrongful, unhelpful or avoidable incarceration more than a high rate of incarceration in the abstract.

People tend to engage the topic of incarceration through stories more than statistics. Our focus group participants told stories about friends and family who had experienced the criminal justice system or about experiencing it themselves. Some described lacking the resources to mount an adequate defense. Some talked about family members who had been imprisoned because they were addicted to drugs. Others voiced frustration with a slow system that exacts fees from defendants. While participants often expressed quite punitive attitudes toward violent offenders and were unmoved by data about increasing rates of incarceration, they also expressed an openness to reforms that resonated with their experiences and the stories of their friends and family.

If such stories undergird the common ground that currently exists on incarceration and the criminal justice system, other stories may undermine that common ground. This has been the fate of criminal justice as a partisan issue in U.S. politics: Stories of incarcerated people who have been paroled or released and then go on to commit violence have often been used for political ends—with barely veiled racial overtones. Tragic instances of wrongdoing after release do occur, and we do not mean to suggest that they are an invalid part of the public conversation. But because of the strong emotions that tend to swirl around crime and safety, such stories can sometimes be used to scare and manipulate people. In those instances, the public’s common ground and judgment are not likely to be bolstered solely by statistics that show such events to be the exception rather than the rule or that show a receding crime rate overall. More effective, we’d guess, would be alternative compelling stories—of people unjustly imprisoned, of families reunited and of disastrous mistakes avoided.
METHODOLOGY

We conducted three two-hour focus groups in September 2017 with 31 people in three locations across the United States. The groups were conducted in urban Hamilton County, Ohio; rural Franklin County, Missouri; and suburban Suffolk County, New York. Locations were chosen based on several factors, including their voting histories: Ohio, which has historically been a swing state in presidential elections; Missouri, which has voted for the eventual winner of all but three presidential elections; and Suffolk County, New York, which supported Donald Trump in the 2016 presidential election after Barack Obama won the county in the 2008 and 2012 elections. We also avoided states that had decriminalized recreational marijuana at the time we conducted the groups.

Prior to designing the focus group moderator’s guide, we reviewed recent survey research and conducted five interviews with experts in incarceration policy and public opinion related to criminal justice.

In all groups, participants were recruited by professional market research firms according to Public Agenda’s specifications to represent a cross section of the public in those counties in terms of gender, age, socioeconomic status, race/ethnicity and political party affiliation. During recruitment, potential participants were asked whether they had ever been arrested or served a prison sentence, although they were not recruited solely on that basis. Focus groups took place in market research facilities, and all participants were compensated for their time. Senior Public Agenda staff moderated the focus groups, which were video recorded and professionally transcribed. Public Agenda’s research team collaboratively developed a coding scheme and coded the focus group transcripts using Dedoose qualitative analysis software.

More information about this study can be obtained at http://www.hiddencommonground.org or by emailing research@publicagenda.org.
BIBLIOGRAPHY


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