Article

Theoretical Criminology
2024, Vol. 28(4) 437–458

DOI: 10.1177/13624806241285425
journals.sagepub.com/home/tcr

Reforming the shadow carceral state

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Abstract

This article examines the repeal of prison pay-to-stay policies in the United States. We process-trace reform efforts in Illinois drawing from novel data retrieved through multiple FOIA requests to state agencies and public records searches. Our analysis reveals how lawmakers who advocated for reforming the shadow carceral state in 2016 and 2019 through repealing prison pay-to-stay repurposed penal logics they had once used punitively in the 1980s and 1990s to enact the same policy—such as protecting taxpayers, fiscal efficiency, and rehabilitation. Our findings advance existing research by suggesting that penal logics are open to interpretation depending on the socioeconomic and historical moment. These contextual factors are also crucial to determining how lawmakers and institutions re-interpret long held penal logics when reforming the shadow carceral state. We argue the ways in which lawmakers strategically operationalize penal logics exemplifies their cultural durability as a resonant means to a political end.

Keywords

Abolition, LFOs, monetary sanctions, pay-to-stay, policy, prisons, reform

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Introduction

Scholars of punishment have long sought to explain why new punishments emerge, why policies change, or attitudes shift (Campbell et al., 2020; Feeley and Simon, 1992; Rubin, 2021). As legislative reform in the United States over the past 20 years has moved away from traditional policies of mass incarceration like lengthy prison sentences to "smart on crime" evidence-based practices and support for broad, bipartisan, system-level reform, such questions have become more urgent (Dagan and Teles, 2016; Frost and Clear, 2018; Gottschalk, 2016; Seeds, 2017). By the 2010s, nearly every state had passed legislation to reduce the use of incarceration in what some scholars point to as an inflection point in penal policy (Silber et al., 2016; Subramanian et al., 2014). In exploring the dynamics that led to these attempts to scale back the carceral state, some scholars highlight changing views of incarceration while others note the importance of fiscal and institutional changes at the state and national levels (Beckett, 2018; Beckett et al., 2018; Campbell et al., 2020; Green, 2015; Seeds, 2017).

Our article explicates the same processes of penal change, but as they pertain to reforming the shadow carceral state, which requires change at the intersections of criminal, civil, and administrative legal systems rather than solely change to legislative criminal law. The shadow carceral state, as defined by Beckett and Murakawa (2012), highlights how the criminal legal system annexes institutions considered "non-punitive" and blends different strata of legal authority. Over this period, the shadow carceral state has expanded penal power through increased civil and administrative pathways to incarceration, the creation of civil alternatives, and the incorporation of criminal law into civil or administrative processes. Though evolving alongside the carceral state, these emerging legal structures are often understood by lawmakers as "not punishment" because they are enforced by administrative and civil systems. Through them the "get-tough" nature of mass incarceration is preserved but made hidden and transferred to other institutional contexts.

In this article, we ask what forces prompt attempts to reform the shadow carceral state, and how does that reform process unfold? We explore these questions through a case study of the repeal of prison pay-to-stay policies in the state of Illinois. Pay-to-stay is the practice of charging currently or formerly incarcerated individuals fees for their confinement through per diem and/or service-specific costs. Our analysis reveals how lawmakers who advocated for reforming the shadow carceral state in 2016 and 2019 through repealing prison pay-to-stay statutes repurposed penal logics such as protecting taxpayers, fiscal efficiency, and rehabilitation they had once used punitively in the 1980s and 1990s to enact the same policies. Lawmakers advocating for reform used this revolving political strategy to position their state as a bi-partisan leader in the governing balance between protecting the welfare of its citizenry and attending to state fiscal austerity. Their advocacy took place amid very public political debates over the utility of prison pay-to-stay in Illinois, in which critics pointed to the excessive harm caused to incarcerated individuals, the high cost to taxpayers, and the negative impact on rehabilitation—all with little financial benefit to the state.

Our findings support existing research on the carceral state (see Goodman et al., 2015) that argues varied penal logics are available for deployment across socioeconomic and

historical moments, whereas penal change occurs as a result of struggle between actors and the blending of priorities. Rather than rupturing penal logics, these contextual factors are crucial to determining how lawmakers and institutions re-deploy them. We argue the ways lawmakers strategically operationalize long-standing penal logics exemplify their *cultural durability*. Understood as the potential for a cultural frame, logic, or object to shapeshift its resonance, usability, and legitimacy given the socioeconomic and historical moment and the positionality of the actors and institutions wielding it, the concept of cultural durability we develop here reveals the significance of timing and local contexts in opportunities for reform. This perspective on penal culture is supported by the scholarly belief that culture provides opportunities for "strategies of action" (Swidler, 1986: 273), meaning we focus our article on how "cultural meanings are organized and brought to bear at the collective and social, not the individual, level" (Swidler, 2008: 617). The concept of shapeshifting builds upon Swidler's contention that action is not determined situationally, but, "rather it reemphasizes the powerful, independent causal role of culture by trying to develop much clearer understandings about where particular cultural logics are grounded, how they are organized, and in what contexts they are brought to bear on action" (2008: 618). The dynamic nature of these durable cultural logics is witnessed through their activation, deactivation, and reactivation as different contexts shape attitudes and modes of action. These logics are omnipresent, even during periods of dormancy, waiting to be mobilized, whether in the halls of the legislature or in budgetary strategy sessions or in the public square, in "the long struggle" of penal policy and practice.

Pay-to-stay and explaining penal change

The social, political, and economic forces that led to the rise of the carceral state and the era of mass incarceration in the United States are well documented (Alexander, 2010; Campbell and Schoenfeld, 2013; Garland, 2001; Gottschalk, 2006; Murakawa, 2014; National Research Council, 2014; Pfaff, 2017; Western, 2006). Yet, as Beckett et al. (2018) note in their review of the scholarship on criminal justice policy, while we have a strong understanding of how mass incarceration developed, we know little about the often-contradictory dynamics occurring in the reform moment. Other scholars have emphasized that penal change is not linear, but heavily contested, locally specific, and unevenly applied (Goodman et al., 2015; Rubin, 2019; Schoenfeld, 2016). Thus, additional studies are needed to understand how reform of the carceral state, both in its visible and shadow counterparts, unfolds as a process of penal policy change situated within specific contextual forces.

In recent years legislative and policy changes have slowed and then reduced the number of people incarcerated, leading some scholars to suggest that we may be moving into an era distinct from that of mass incarceration (Beckett, 2018; Beckett et al., 2018; Carson and Anderson, 2016; Campbell et al., 2020; Green, 2015; Seeds, 2017; Wool and Stemen, 2004). Whether this shift reflects a distinct era or not, some argue that the past 20 years marks a dramatic change in discourse and penal policy logics across the political spectrum from the period preceding it, in that new logics are redefining the role of prison in society and who should be incarcerated, often bifurcating

policies for nonviolent and violent offenses (Beckett et al., 2018; Clear and Frost, 2013; Green, 2015; Hinton and Cook, 2021; Silber et al., 2016). Others point to shifts in institutional, political, and historical contexts as prompting the policy change of this era, rather than change in penal logics. For example, scholars have identified fluctuations in state finances and the changing calculus of mass incarceration as driving forces currently prompting reform efforts (Beckett, 2018; Brown, 2013; Frost and Clear, 2018; Gottschalk, 2016). Financial crises, in both the early 2000s and 2008 specifically, led to declining state budgets, which pushed state legislatures to reconsider correctional spending. These fiscal needs were coupled with shifting attention to the war on terror, the need to address prison overcrowding, declining crime rates in the 1990s, and changes in public attitudes (Green, 2015; King and Mauer, 2002; Percival, 2015; Wool and Stemen, 2004).

While some authors hoped the desire to shrink correctional budgets would result in positive changes for those incarcerated, in many cases, cutting costs and resources for incarcerated populations has made correctional facilities more punishing than before (Gottschalk, 2016), as prisons abandoned educational programs and ceased providing adequate food and basic supplies. Often costs have simply been passed to incarcerated individuals themselves (Aviram, 2015). Or prison populations have simply been moved, to rural facilities or county jails, leading to overcrowding and worsening institutional conditions there (Bailey and Peirce, 2021; Lofstrom and Raphael, 2013). These examples call into question whether the current era has in fact moved away from a "punishment imperative" (Clear and Frost, 2013) or whether fiscal and institutional demands are merely shifting how the state punishes.

Prior research on the carceral state shows that external factors may prompt policy change, yet they are unlikely to determine new penal logics (Campbell et al., 2020). Policies do, however, affect the political landscape by influencing identities, interests, and redefining incentives (Page, 2013b; Soss and Schram, 2007). This push and pull of the visible carceral state and shadow carceral state during times of penal change warrants further scholarly exploration, particularly in the realm of monetary sanctions or legal financial obligations (LFOs). Monetary sanctions, or fines, fees, and costs associated with criminal legal contact, place a crippling fiscal burden on poor individuals and families of color (Harris, 2016; Martin et al., 2018; Paik and Packard, 2023), while seeking revenue for jurisdictions (Martin, 2018; Page and Soss, 2017). The shifting punitiveness is made concrete in the implementation of monetary sanctions such as pay-to-stay (Aviram, 2015; Fernandes et al., 2022).

As a monetary sanction, pay-to-stay fees epitomize the rapid expansion of the shadow carceral state during the rise and height of mass incarceration (Friedman, 2021). Yet we know little about efforts to repeal them. Our prior research suggests that pay-to-stay statutes are often established or expanded during key moments of fiscal crisis as states seek to scale back public expenditures on confinement facilities, such as asylums, jails, and prisons (Kirk et al., 2020). As economically and racially marginalized "users" of the criminal legal system are tasked with financing it, their tethers to the state are deepened through indebtedness (Feola, 2020; Goldstein et al., 2020; Page and Soss, 2017, 2021) and "financial capture" (Friedman, 2021). States pursue charges through a variety of methods, including charging wealthier people for jail incarceration to secure better or

safer facilities (Buchanan, 2007; Eisen, 2015; Weisberg, 2007) or, in the case of civil recoupment lawsuits, by suing incarcerated people at a per diem rate for room and board at the jail and prison levels (Friedman et al., 2021). States and counties often use this power, enshrined in state statute, amid budget shortfalls or fiscal crises, casting incarcerated people as both fiscally and morally responsible for their "debt" (Aviram, 2015) labeling them as "willful nonpayers" (Fernandes et al., 2022). As these practices have become more entrenched, so, too, have calls for their reform or repeal. In this article, we explore the case of repeal in Illinois as illustrative of changes to the shadow carceral state.

Data and methods

Following Campbell et al.'s (2020: 391) view that legislation, both passed and proposed, "shapes the penal field by introducing new approaches or ideas that are later incorporated into rhetoric, policy, or practice", we analyze legislative debates and statutes about prison pay-to-stay in Illinois over a 40-year period, from 1981 until it was successfully repealed in 2019. Our prior work has shown that Illinois is an illustrative case. It has outlawed private prisons, while leading in other kinds of legal financial reforms, and represents the expanding commodification of public criminal legal systems that adjudicate debt through blending criminal, civil, and administrative penalties.

We began by collecting transcripts and bill information from Illinois online archives, and then we independently and systematically manually coded the documents for themes, similarities, divergences, and for details of the texts. We drafted separate memos and shared them to identify important points of divergence and convergence, noting ways the language of the debates and statutes operate and how legislators discuss them in comparison with the language of the lawsuit case files. We then returned to the texts with these themes and concepts in mind to investigate any additional evidence to strengthen and/or nuance our understanding of particular concepts and themes. Our abductive thematic analysis considered existing theories but did not fit the empirical data to these previous understandings; instead, we aimed to find the most logical solution to the theoretical dilemma, which could reside among existing theories or necessitate the construction of new theories to explain the empirical findings (Tavory and Timmermans, 2014).

Our second data source consists of civil lawsuit case files from the Illinois Attorney General's Office from 1996 to 2015, first manually coded by all three authors and compared with the themes that arose in the legislative debates. For the second round of analysis, these lawsuit case files were coded by a research assistant, Feba George, under the close supervision of the lead author using NVivo Qualitative Analysis Software Version 12, and further analyzed through memos completed separately by each author. As a result of Freedom of Information Act (FOIA) requests made in 2017 to the Illinois Attorney General and public records requests to county clerks, we have obtained 102 pay-to-stay recoupment lawsuits that seek reimbursement of room and board per diem costs of incarceration from currently or formerly incarcerated people in Illinois out of 160 lawsuits brought during this period. Seventy-eight percent of defendants in our dataset were currently incarcerated at the time of suit with 13% unspecified in the case file. Our dataset is

the best information available on prison pay-to-stay lawsuits in the USA. It includes complete case files and all-inclusive records, where we can often see the entire arc of a case. Under the close supervision of the lead author, research assistants Feba George and Manny Adelstein created figures and graphs outlining key data points based on these records, three of which are displayed in this article as Figures 2, 6, and 7.

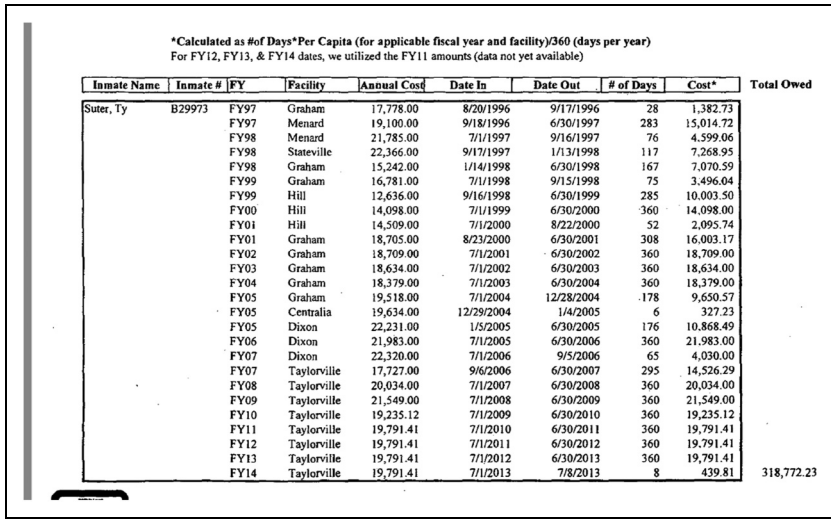
The contents of the lawsuit files range; however, the files consistently contain the initial attachment order filed by the state that establishes their claim to the assets per pay-to-stay statutes, an affidavit completed by bank or investment institution personnel certifying the assets, and the back and forth between the state as plaintiff and the incarcerated person as defendant. This back and forth can be in legal form, with pleadings, bills, and other formal responses, or in the form of typed or hand-written responses from incarcerated defendants to the state's claims, which we include as Figures 1, 3, and 4 in this article. In Illinois, incarcerated people are mandated to disclose all their assets throughout their incarceration, which prompts the Attorney General to sue those reporting any level of assets for the per diem cost of room and board. If the state successfully sues the incarcerated person, it opens their personal and/or jointly held familial assets up to collection procedures for years and often decades depending on the state.

These lawsuits are the primary source of data that records the practices of pay-to-stay collection in Illinois, and the amounts assessed, and amounts collected. They provide important detail about how Illinois engages in pay-to-stay collection, the legal arguments, the justifications of these laws, how the state determines who to go after and when, and the consequences experienced by individuals and their families.

Cultural durability and the strategic use of penal logics

In 1981, the Illinois House passed Bill 542, concerning the adoption of statute 730 ILCS 5/3-7-6, which instituted the practice of pay-to-stay in the state. Lawmakers lauded Republican Representative Jacob John Wolf for bringing it to the House floor. Wolf had recently read about the practice in Michigan in a *Reader's Digest* article and thought it might be good to follow the neighboring state's model. He argued that charging people for their incarceration could offset the growing correctional costs caused by the exponential increase in the population behind bars that was occurring during a period of budget cuts caused by the 1980s recession.

The bill passed with bi-partisan support, counting 140 in favor and only 12 against it. It specifically positioned incarcerated individuals as consumers of their own confinement. They now owed the state a civil debt because of their criminal sentence, which would be recouped through a daily rate set by the Department of Corrections Accounting Division and enforced by the Illinois Attorney General using civil lawsuits. Figure 1 is a representative example from our dataset documenting how Illinois started calculating incarceration costs after enacting prison pay-to-stay. This figure shows a bill listing the cost per day per prison that was included as evidence against an incarcerated defendant in a recoupment lawsuit, leading to US$318,772.23 in civil damages for surviving 6079 days in prison, or roughly 16.5 years.



*Calculated as #of Days*Per Capita (for applicable fiscal year and facility)/360 (days per year)
For FY12, FY13, & FY14 dates, we utilized the FY11 amounts (data not yet available)

Inmate Name	Inmate #	FY	Facility	Annual Cost	Date In	Date Out	# of Days	Cost*	Total Owed
Suter, Ty	B29973	FY97	Graham	17,778.00	8/20/1996	9/17/1996	28	1,382.73	
		FY97	Menard	19,100.00	9/18/1996	6/30/1997	283	15,014.72	
		FY98	Menard	21,785.00	7/1/1997	9/16/1997	76	4,599.06	
		FY98	Stateville	22,366.00	9/17/1997	1/13/1998	117	7,268.95	
		FY98	Graham	15,242.00	1/14/1998	6/30/1998	167	7,070.59	
		FY99	Graham	16,781.00	7/1/1998	9/15/1998	75	3,496.04	
		FY99	Hill	12,636.00	9/16/1998	6/30/1999	285	10,003.50	
		FY00	Hill	14,098.00	7/1/1999	6/30/2000	360	14,098.00	
		FY01	Hill	14,509.00	7/1/2000	8/22/2000	52	2,095.74	
		FY01	Graham	18,705.00	8/23/2000	6/30/2001	308	16,003.17	
		FY02	Graham	18,709.00	7/1/2001	6/30/2002	360	18,709.00	
		FY03	Graham	18,634.00	7/1/2002	6/30/2003	360	18,634.00	
		FY04	Graham	18,379.00	7/1/2003	6/30/2004	360	18,379.00	
		FY05	Graham	19,518.00	7/1/2004	12/28/2004	178	9,650.57	
		FY05	Centralia	19,634.00	12/29/2004	1/4/2005	6	327.23	
		FY05	Dixon	22,231.00	1/5/2005	6/30/2005	176	10,868.49	
		FY06	Dixon	21,983.00	7/1/2005	6/30/2006	360	21,983.00	
		FY07	Dixon	22,320.00	7/1/2006	9/5/2006	65	4,030.00	
		FY07	Taylorville	17,727.00	9/6/2006	6/30/2007	295	14,526.29	
		FY08	Taylorville	20,034.00	7/1/2007	6/30/2008	360	20,034.00	
		FY09	Taylorville	21,549.00	7/1/2008	6/30/2009	360	21,549.00	
		FY10	Taylorville	19,235.12	7/1/2009	6/30/2010	360	19,235.12	
		FY11	Taylorville	19,791.41	7/1/2010	6/30/2011	360	19,791.41	
		FY12	Taylorville	19,791.41	7/1/2011	6/30/2012	360	19,791.41	
		FY13	Taylorville	19,791.41	7/1/2012	6/30/2013	360	19,791.41	
		FY14	Taylorville	19,791.41	7/1/2013	7/8/2013	8	439.81	318,772.23

Figure 1. Example of IL Department of Corrections bill calculating per-diem cost of incarceration.

To heighten the chances of extracting payment, lawmakers would revisit the statute several times over the subsequent years, widening the types of assets that could be seized, explicitly preventing defendants from claiming indigency, and adding more recoupment mechanisms through administrative law such as the seizing of pension, veteran, and disability checks, tax refunds, and federal benefits (see Kirk et al., 2020). During this period, political control over the Legislature changed hands between Democrats and Republicans and there were six different gubernatorial regimes; however, lawmakers' bi-partisan advocacy for the use of prison pay-to-stay only increased. Over the same time frame, incarcerated defendants and their family members continued to write letters to the Attorney General and Department of Corrections in response to the lawsuits pointing out the intergenerational harm created by this new form of state debt and their inability to pay the bill.

Each time Democrat and Republican lawmakers and governors revisited the issue of prison pay-to-stay, they positioned the practice as positively serving the state of Illinois given its alignment with the penal logics of protecting taxpayers, fiscal efficiency, and rehabilitation. These same principles came into play again and again to justify the continued expansion of the carceral state, even as the system overall became more and more expensive to run. The cultural durability of these justifications withstood the changing institutional context and growing use of incarceration.

The imposition of pay-to-stay exemplifies how a bi-partisan stance not only built mass incarceration and expanded the carceral state, but also exponentially spurred the rise of the shadow carceral state. In fact, across the tenure of prison pay-to-stay in Illinois, the Attorney General initiated the most lawsuits against incarcerated defendants during the 2003–2009 Democratic governorship of Rod R Blagojevich, who was later impeached, removed from office, and convicted and incarcerated for eight years on federal public

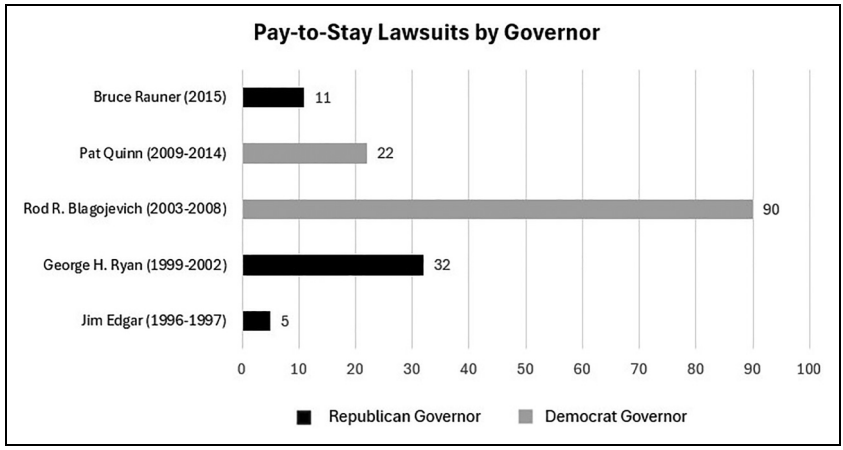
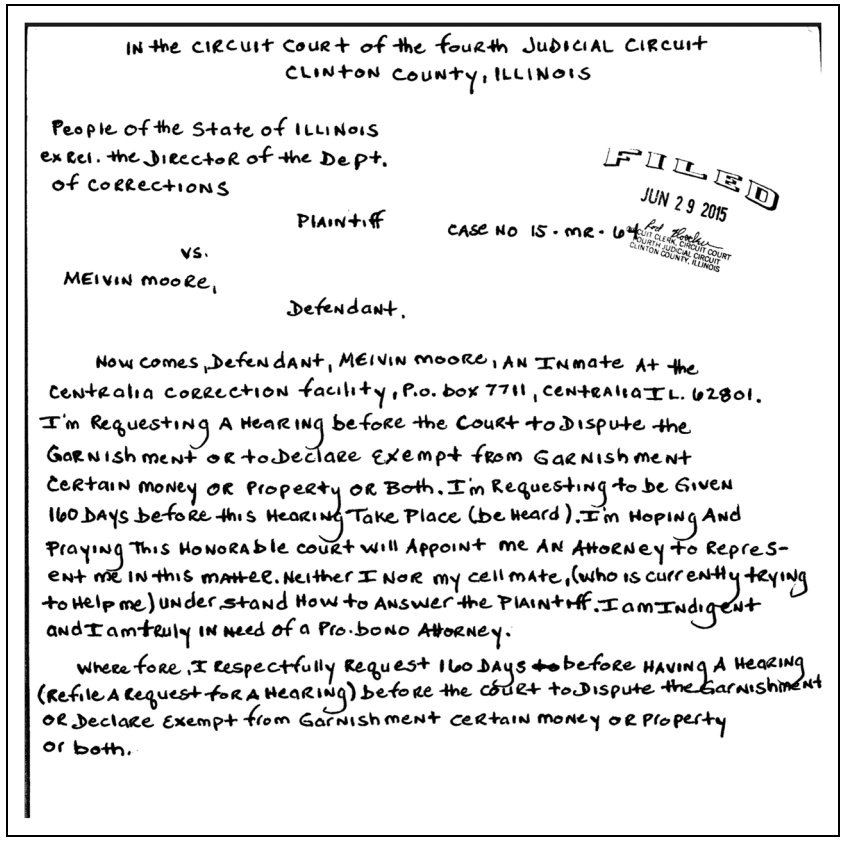


Figure 2. Lawsuits initiated by governor and their political affiliation 1996–2015.

corruption charges unrelated to pay-to-stay, though his governorship is telling of the state's tenuous political history. Figure 2 shows how 90 lawsuits were initiated under Democratic Governor Blagojevich compared with only 32 under Republican Governor George H Ryan.

By the mid-2010s, Illinois, like many other states around the country began to experience a noticeable uptick in public criticism from advocacy groups, social justice organizations, reentry coalitions, academics, and journalists who were questioning the continued utility of tough-on-crime era policies, with conservatives pointing out the excessive use of taxpayer resources for corrections and progressives pointing out the need for evidence-based policy reforms. Alongside broader scholarship and advocacy nationally, local organizations and policy actors in Springfield and Chicago had turned their attention to court fines and fees and bail reform as key punitive financial punishments in need of reform in Illinois. This national and local wave left Illinois under scrutiny by both Republican and Democratic contingents, with lawmakers slowly beginning to take note of their constituents.

Amid this socioeconomic and historical moment, a turning point for prison pay-to-stay occurred in 2015, with the publication of a long-form article by journalists at the *Chicago Tribune*, which presented Illinois as being behind the times and lagging in terms of reform efforts on a national scale. Mills and Lighty (2015) introduced prison pay-to-stay to the everyday Illinoisian reader through their widely read newspaper platform and positioned it as a little-known blemish on Illinois lawmakers' tough-on-crime era political legacy. Until this point, little attention or public knowledge existed regarding this practice in the state. In the legislative transcripts, more junior lawmakers also expressed surprise as to the existence of these fees. The *Tribune* article highlighted the tragic life of Melvin Moore, a Black man with strong family ties to Illinois, and the lawsuit he faced from the Department of Corrections, which left him destitute upon his release from prison. We retrieved a copy of Moore's lawsuit case file through FOIA requests and Figure 3 from that file shows that he responded to the civil complaint explaining that he did not understand the lawsuit brought against him by the state and that he needed legal



IN the CIRCUIT COURT of the FOURTH JUDICIAL CIRCUIT
CLINTON COUNTY, ILLINOIS

People of the State of ILLINOIS
ex Rel. the DIRECTOR of the Dept.
of CORRECTIONS

PLAINTIFF

VS.

MELVIN MOORE,

DEFENDANT.

FILED
JUN 29 2015
Ted Hoeker
CIRCUIT CLERK, FOURTH JUDICIAL CIRCUIT COURT
CLINTON COUNTY, ILLINOIS

CASE NO 15-MR-64

NOW COMES, DEFENDANT, MELVIN MOORE, AN INMATE AT the CENTRALIA CORRECTION facility, P.O. BOX 7711, CENTRALIA IL. 62801. I'm REQUESTING A HEARING before the COURT to DISPUTE the GARNISHMENT OR to DECLARE EXEMPT from GARNISHMENT CERTAIN MONEY OR PROPERTY OR BOTH. I'm REQUESTING to be GIVEN 160 DAYS before this HEARING TAKE PLACE (be HEARD). I'm HOPING AND PRAYING THIS HONORABLE COURT will APPOINT me AN ATTORNEY to REPRESENT me IN this MATTER. NEITHER I NOR my CELLMATE, (who is CURRENTLY trying to HELP me) UNDERSTAND HOW to ANSWER the PLAINTIFF. I am INDIGENT AND I am truly IN NEED of a PRO-BONO ATTORNEY.

WHEREFORE, I RESPECTFULLY REQUEST 160 DAYS ~~to~~ before HAVING A HEARING (Refile A REQUEST for A HEARING) before the COURT to DISPUTE the GARNISHMENT OR DECLARE EXEMPT from GARNISHMENT CERTAIN MONEY OR PROPERTY OR both.

Figure 3. Melvin Moore's response to civil compliant.

counsel. In the letter Moore requested a hearing to dispute the collection of these fees, stressing the need for more time and help from counsel.

Moore's devastating experience is representative of others in our dataset. Incarcerated defendants are unanimously denied an attorney because even though pay-to-stay is triggered through criminal legal contact, it is enforced using civil and administrative law, thus court-appointed counsel is not considered a legal right. Figure 4 documents another futile attempt by Moore to plead for relief from the court, in which he submits to the court an itemized list of necessities he anticipates needing in the first six months after release from prison such as rent, food, and clothing and their respective costs. Without the funds to meet his needs, Moore argues he will be set up to fail once released.

Despite explaining that he needed time to understand the case brought against him, including listing his numerous health issues, which were exacerbated by serving 20 years in state prison, and his need for financial resources to aid in his societal transition after release, the court denied Moore's request and rendered judgment in favor of the state of Illinois. Like many people who are released from prisons, Moore anticipated lacking

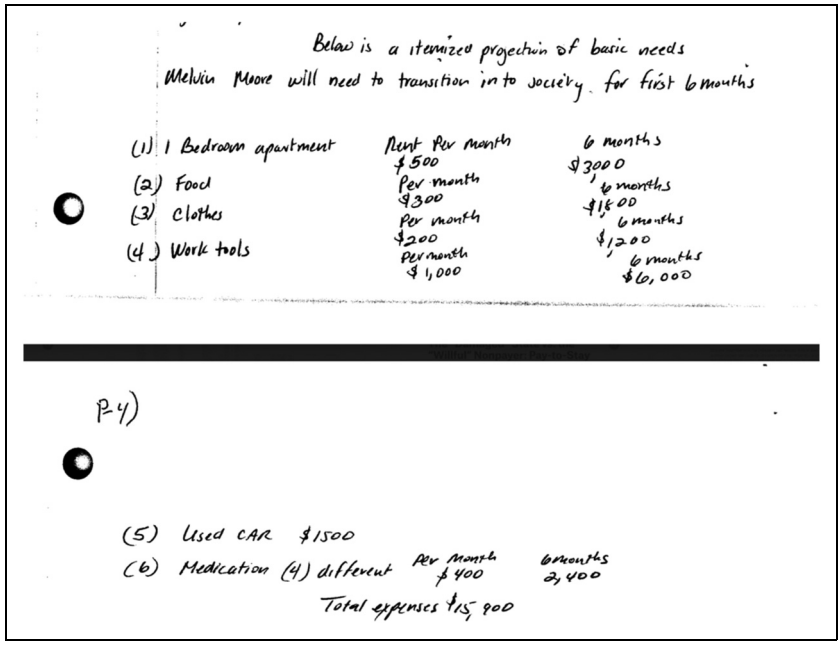


Figure 4. Melvin Moore's itemized list of necessities for reentry.

access to essentials such as rent, transportation, and food after release. Previous scholars have documented the difficulties in the reentry process, particularly those from historically marginalized communities (Garcia-Hallett, 2022; Kirk and Wakefield, 2018; Miller, 2021; Miller and Alexander, 2015; Roberts, 2003).

Mills and Lighty (2015) did their best to humanize the plight of incarcerated people in Illinois and quoted Moore's sister who lamented how her brother died penniless soon after his release because of the lawsuit and "didn't have a dime … we had to scuffle up money to cremate him." Moore was forced to get on food stamps and go into a homeless shelter after his parole, and subsequently his physical and mental health deteriorated. The routine callousness of the state as outlined in the *Chicago Tribune* expose immediately generated public outcry across Illinois. Politicians of all views took note, particularly concerned about the quote from Attorney General Lisa Madigan, tasked with civil enforcement of pay-to-stay statutes, who stated that she no longer saw utility in it. Her public comments signaled her office's displeasure with being forced to file prison pay-to-stay lawsuits against incarcerated defendants. Prior to 1990, the Attorney General had discretion in choosing which lawsuits were worth pursuing, but due to pressure from the Department of Corrections lawmakers amended the existing pay-to-stay statute with Public Act 86-1320—making it so their office must bring a lawsuit against every person the Department of Corrections suspected of hoarding resources, with sums as little as US $200 familial deposits into Inmate Trust Funds enough to raise department suspicion.

In the article, the Attorney General commented:

> The Legislature should revisit whether this law is appropriate. These recoveries may raise roadblocks to former inmates trying to lead successful lives out of prison. As a result, the judgments that must be made in attempting to recover incarceration costs raise moral questions that legislators need to address.
>
> (Mills and Lighty, 2015)

Her public attempt to shift blame to the Legislature combined with her disdain about the policy's morality and contemporary utility further linked prison pay-to-stay to ongoing debates around whether lawmakers' tough-on-crime era policies still aligned with the penal logics of protecting taxpayers, fiscal efficiency, and rehabilitation for the state of Illinois. This turning point, backed by bi-partisan constituents, catalyzed lawmakers to revisit the policy.

In response to the *Chicago Tribune* article, lawmakers quickly fashioned a bill to repeal prison pay-to-stay, with Representative Kelly Cassidy openly citing the negative press in her remarks introducing the bill. Filed initially in the State Senate by Democratic Senator Daniel Biss, SB2465, the first bill to repeal the practice was first read on 9 February 2016, barely two months after the 30 November 2015 publication of the Mills and Lighty expose. SB2465 listed the following reforms that would repeal prison pay-to-stay in Illinois:

1. Removing the ability of DOC [Department of Corrections] to investigate assets to sue people for these assets.
2. Removing the ability of DOC to keep a portion of compensation that individuals who are incarcerated earned from work assignments to offset the cost of their incarceration or from the sale of art or literature while incarcerated.
3. Removing the accompanying ability to notify the AG [Attorney General] of this partial reimbursement.
4. Repealing Section 3-7-6, which allowed the DOC to require that individuals who are incarcerated to cooperate in providing financial information and allowed the AG to pursue claims against folks who are or were incarcerated.
5. Preventing attachments to property used in securing assets for reimbursements under Section 3-7-6.

Reform two was hotly debated because lawmakers wanted to clarify that even though profits from the sale of items while incarcerated would no longer be seized for pay-to-stay, the state could still prevent incarcerated individuals from making money due to notoriety under a different set of laws known as "Son of Sam laws". These laws were established in several states in response to serial killers who had profited from their notoriety while incarcerated, through the sale of their stories, interviews, or belongings. In discussing the initial pay-to-stay law in 1981, lawmakers had referenced John Wayne Gacy, an infamous Illinois serial killer who sold paintings while incarcerated. At the time, the state had wanted to seize profits generated from Gacy's prison paintings for pay-to-stay recoupment. This clarification in the reform language was important to lawmakers to make clear to victims' rights groups especially that the repeal would only unlink profits from pay-to-stay legislation and not impact "Son of Sam

laws" on the books. Despite the fact that most people incarcerated lack significant assets and that those targeted by these laws are often the most disadvantaged, lawmakers frequently imagined the need to punish wealthy incarcerated individuals and particularly those who stand to profit while incarcerated.

Senator Biss opened the floor with the need to protect taxpayers, rehabilitate people after incarceration, and the imperative to make Illinois more fiscally efficient, penal logics he and his supporters would continue to weave together and draw on as the bill moved through the Senate that spring (State of Illinois, 5 April 2016: 16–18):

> SENATOR BISS:
>
> … What it does, though, is it makes it almost impossible for people, who have paid their debt to society, to then get back on their feet, be able to afford housing, seek employment upon release. This is, I think, a– a really bad public policy that this bill would repeal.
>
> … making sure that our Criminal Code reflects our fundamental value as a State that we believe in rehabilitation.
>
> Well, my argument would actually center on two different costs to the taxpayer. One is, as you mentioned, the literal cost of recouping; the other is the cost that you endure as a society when you return people from the criminal justice system to the street without a penny to their name, which does two things—does a number of things—but does two things with a fiscal impact.
>
> Number one, it increases those individuals' reliance on taxpayer-funded programs and, number two, it decreases those individuals' capacity to find legal employment and therefore increases the odds of recidivism. Those two phenomena both increase costs and the guesses of the experts I have spoken to suggest that those costs would be significantly in excess of the half million dollars recouped over a long period of time, which I think is why that we don't have opposition to this bill from the Department [of Corrections].

Biss' discussion highlights how these practices of the shadow carceral state are similarly linked to both the criminal legal system and to other social systems—particularly in this case to other public programs and social service supports. Reforms to this system require legislators to consider issues of justice, punishment, but also the broader welfare system. Rehabilitative concerns are blended with worries about the functioning and funding of administrative and social service systems.

As we saw previously, officials had explicitly focused on the need to balance the costs of confinement and other social services during the initial passing of prison pay-to-stay (730 ILCS 5/3-7-6) in 1981. When introducing this statute, Representative Wolf and his adherents fought to convince fellow lawmakers that prison pay-to-stay was necessary for Illinois to balance its books (State of Illinois, 18 May 1981: 88–90):

> What this is leveled at, Mr Speaker, is not designed to force indigence, of course, which would be excluded from this, indigent prisoners confined to a penal institution to pay their room and board. It's an honest attempt to recover costs from those who have large assets or who have enriched themselves because of notoriety gained during their trial.

Despite the hope that this law would not "force indigence", we have found in our lawsuit data that in Illinois, pay-to-stay lawsuits have frequently targeted individuals with very few assets and savings. In practice, pay-to-stay has and does force indigence on those whom the state targets, with their sights often set on those from racially and economically marginalized groups based on an imagined culpability and moral and financial responsibility for their own confinement.

When signing the initial statute (730 ILCS 5/3-7-6) into law in 1981, Governor Thompson similarly explained that the state could no longer foot the bill for people convicted of crimes as prison populations rose during the current recession:

> … bursting at the physical and financial seams of a correction system which has been extended again and again and again in the past four years at great cost to other areas of social concern. To this point we have been willing to pay the price because prison confinement, while expensive, at least protects society from those most dangerous among us.

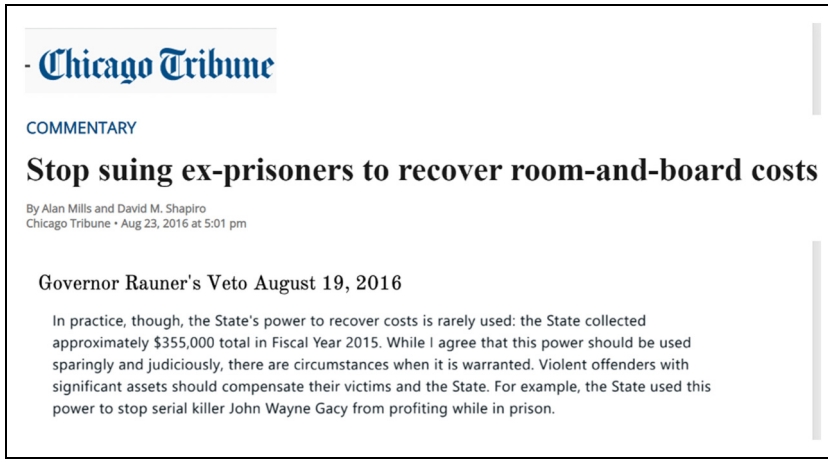
Additionally, in the original debates, lawmakers had referred to the prison as an institution of rehabilitation rather than punishment as justification for why the state was entitled to reimbursement—equating it to a form of welfare provision or a social service—drawing on long-standing laws on asylums, hospitals, and institutions (Kirk et al., 2020).

The penal logics operationalized in 1981 were the same as those lawmakers used in the debate to repeal it (SB2465), pointing to their durability and cultural staying power. Their use within the contemporary landscape highlights the strategic use of penal logics, meaning their usability, legitimacy, and resonance shapeshifts according to a given political end, rather than the evocation of completely new penal logics. This cultural durability suggests that while institutional memory about the origin of a legal template such as pay-to-stay had faded from explicit recollection, the cultural tools wielded to enact a policy remained readily available and engrained within its routines such that lawmakers mobilize them to justify radically different decisions. In this example, we see quite clearly how the meaning and interpretation of penal logics is effective enough for political gain, yet malleable enough to be reimagined for the times.

In the spring of 2016, the repeal bill (SB2465) successfully passed, representing bi-partisan support, though Democratic leaning. On 23 June the repeal bill went to Republican Governor Bruce Rauner's desk and sat there for a month-and-a-half before he shocked lawmakers and the public by vetoing it on 19 August. Concerned that incarcerated people could profit from their crimes if prison pay-to-stay did not exist, the governor explicitly referenced John Wayne Gacy as a motivating veto factor.

Four days later Mills and Shapiro (2016) ran a piece in the *Chicago Tribune* publicly shaming Governor Rauner's divisive decision and quoted parts of his veto statement as seen in Figure 5.

Governor Rauner's public statement was met with much disdain from the Legislature and the public given that the repeal bill (SB2465) did not impact Illinois' "Son of Sam laws", which do prevent incarcerated people from profiting from their convicted offenses. Efforts to repeal prison pay-to-stay did not end there, however, but simply paused, as reformers awaited the next election cycle.


Chicago Tribune

COMMENTARY

Stop suing ex-prisoners to recover room-and-board costs

By Alan Mills and David M. Shapiro
Chicago Tribune • Aug 23, 2016 at 5:01 pm

Governor Rauner's Veto August 19, 2016

In practice, though, the State's power to recover costs is rarely used: the State collected approximately $355,000 total in Fiscal Year 2015. While I agree that this power should be used sparingly and judiciously, there are circumstances when it is warranted. Violent offenders with significant assets should compensate their victims and the State. For example, the State used this power to stop serial killer John Wayne Gacy from profiting while in prison.

Figure 5. Chicago Tribune 2016 article calling for end to pay-to-stay in Illinois and Governor Rauner's 2016 Veto.

Democratic Governor JB Pritzker took office in January 2019 and legislative mobilization in support of repealing prison pay-to-stay quickly resumed. This time, bills were initiated simultaneously from the Illinois House of Representatives and the Senate. Democratic Representative Kelly Cassidy filed HB0900 on 24 January 2019, and a week later on 5 February Democratic Senator Robert Peters filed SB1158, which collectively, were virtually identical to the original repeal bill of 2016. Both managed to gain bi-partisan support in the House and Senate and lawmakers once again drew from their tried-and-true political strategy of wielding the penal logics of fiscal efficiency, protecting taxpayers, and rehabilitation to generate resonance and legitimacy. Representative Cassidy exemplified this point in two sets of summary statements later that spring during House debates:

> What we discovered was that in the course of the 10 years that it had been on the books, we had only recovered something short of a half of million dollars through about a dozen lawsuits, most of which were overturned on appeal. So, it was a significant use of resources, a lot wasted staff hours, an effort for very little return.
>
> (State of Illinois, 4 April 2019: 106)

> This Bill will bring an end to a practice that more than anything else has been a clear failure.
>
> (State of Illinois, 25 May 2019: 119)

From our dataset of the lawsuits filed over this period of time, we gathered information on amounts sued, assets discovered, and assets exempted (Figure 6) to highlight the disparity between amounts discussed by lawmakers.

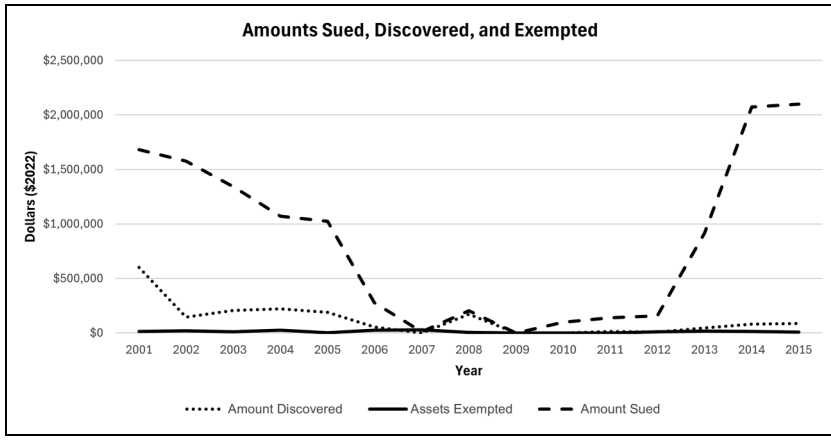


Figure 6. Amounts sued, exempted, and discovered 2001–2015 from dataset.

The dashed line is the amount the state sued for which for 2001 is about 1.6 million dollars. The dotted line is the amount of assets discovered during the course of the lawsuits, demonstrating that recouping prison pay-to-stay was financially futile.

Figure 7 shows what the state reported collecting, so while in 2015 they collected almost US$400,000, overall, we found that the state had not collected anywhere close to the amount assessed in the pay-to-stay bills.

The same penal logics of fiscal efficiency, rehabilitation, and protecting taxpayers touted in the House were expressed in the Senate, with Senator Peters leading the charge each time the bill came up for debate, galvanizing support for the repeal with his comments from March until August:

> So, to means test each prisoner in the Illinois system would be too time-consuming; it would never be applied in an equal manner. And according to the Illinois Department of Corrections, the State

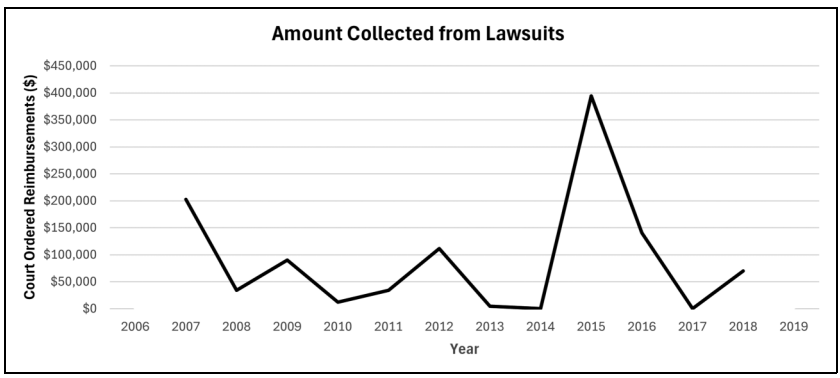


Figure 7. Illinois reported amount collected from lawsuits 2007–2018.

> prison population is about forty thousand individuals. Suing the prisoners is not free and the taxpayers are paying for these lawsuits that have not resulted in substantial income to the State. In 2015, the State recouped three hundred and fifty-five thousand dollars. That's it.
>
> (State of Illinois, 21 March 2019: 18)

> These folks served their time and were released from prison, so their punishment should be over. There's no reason to continue punishing them and risk sabotaging their return to society by imposing a financial burden.
>
> (Illinois Senate Democrats, 12 August 2019)

At the same time, Representative Cassidy continued to lead in the House, again citing the *Chicago Tribune* piece, with Representative Carol Ammons joining her on the record to note that repealing prison pay-to-stay would make Illinois a national leader in tackling the impact of mass incarceration:

> REPRESENTATIVE CASSIDY:
>
> And my thought at that time … I had two thoughts really … one was I don't know what Matthew's [referring to her nephew who had been sentenced to prison pay-to-stay fees in Florida] going to do under those circumstances and feared that he would believe his only option was to return to the activities that got him into this position in the first place, because there's certainly no incentive to go into the legitimate economy when all of your earnings are going to be taken. And my second thought was thank God we don't do this in Illinois. So, imagine my surprise when I read a Tribune investigative piece about this practice …
>
> (State of Illinois, 25 May 2019: 120)

> REPRESENTATIVE AMMONS:
>
> This Bill is completely in line with, I believe, where the Illinois General Assembly is headed to really roll back and reform some of the, what they consider, tough on crime legislation that has really decimated communities across the state.
>
> (State of Illinois, 26 May 2019: 126)

Several lawmakers who were not the primary sponsors of these bills agreed that repealing prison pay-to-stay was in line with how the state should see itself as moving beyond the tough-on-crime era, with many explicitly asking for bi-partisanship on this issue to further push Illinois positively into national discussion. Lawmakers were not wrong that Illinois was on the road to being a national leader. In 2017, the state had passed legislation implementing a fee waiver for people with court debt whose income is below 400% of the poverty line and later in 2021 became the first state to eliminate cash bail. Thus, lawmakers were able to situate repealing prison pay-to-stay within a larger socioeconomic and historical moment where penal logics such as rehabilitation,

protecting taxpayers, and fiscal efficiency, which had previously built up the carceral state, now could justify its repeal.

Conclusion

Reforming the shadow carceral state requires lawmakers to make arguments that cross criminal, civil, and administrative systems. In Illinois, prison pay-to-stay was repealed because it was expensive to administer, counterproductive to rehabilitation and the broader welfare system, and cost taxpayers' money. The years of debate in Illinois moved beyond questions of fairness, punishment, or justice because the political arguments needed to be coupled with administrative motivations about fiscal efficiency and fiscal fairness in order to resonate with a bi-partisan audience that was considering reform. In our dataset, we have numerous appeals in addition to the lawsuit case files, where we find courts striking down legal arguments about the constitutionality of prison pay-to-stay and ignoring defendant concerns about excessive punishment. Further, lawmaker concerns about the lawsuits targeting people who were not deserving of this extra punishment, such as the family members of incarcerated defendants, came up every time the law was amended but were not enough to change practices. This case shows that it was the intersection of these various arguments that galvanized reform efforts. Costs not just to the correctional system, which were often justified as necessary for public safety, needed to be coupled with costs to the state's ability to administer food assistance, housing, and employment resources. The argument of fiscal inefficiency was further coupled with a hindrance of rehabilitation. These findings suggest that another way to consider cultural durability and the repurposing of penal logics as a means of reforming the shadow carceral state is through the lens of reclassification. Our findings speak to a broader scholarly discussion of how institutions reclassify criminally involved people to deal with state budget crises and re-balance the legal demand to meet the expectations of government under fiscal austerity (see Lara-Millan, 2021). In the case of prison pay-to-stay, lawmakers engaged in a similar type of reclassification by refashioning penal logics through a new lens as a way to deal with the fiscal crisis caused by mass incarceration.

Ultimately, the fact that the same penal logics are resurrected and repurposed to reform the shadow carceral state shows a high level of continuity in policy making rather than rupture. While legislators see themselves as moving beyond the tough on crime era of mass incarceration, the same penal logics are motivating penal change as were then, which speaks to the broader question of whether we have entered a new policy era that is post-mass incarceration. Put another way, our analysis suggests we are in an era of refashioning resonant and legitimating penal logics that exhibit long-term cultural durability within the political arena. Also, our findings suggest that reforms to the shadow carceral state operate in the same political area and penal field as those to criminal law (Page, 2013a). Rather than signaling a rethinking of the role of the prison, our research provides further evidence that financial concerns over how and who to punish remain stronger forces for policy change, as fiscal efficiency remains a strong and durable cultural logic, particularly within the context of American nationalism and a society governed by what scholars term "neoliberal penology" (Friedman and Pattillo, 2019;

Friedman et al., 2021; Gibson-Light, 2018, 2022; Wacquant, 2009; Xenakis and Cheliotis, 2018). As prior research suggests, changes in the financial demands of punishment can both lead to more equitable outcomes, such as the abolishment of cash bail, or more punitive ones, such as the cutting of prison programming. The determination of these outcomes is closely tied to how these durable cultural logics are reactivated in a particular socioeconomic and historical moment, and how shifting contexts of reception for these logics lead to policy change or further retrenchment.

While outside of the scope of our data, future research should consider to what degree these repurposed penal logics motivating reform today may be racialized, given the deep racial inequalities in the US criminal legal system and the overtly racist language of early mass incarceration politics. The durability of these penal logics may be tied to the explicit or implicit linkage to biases against racialized and marginalized people and groups, with punitive penal logics tapping into deep-seated fears of racialized others (Beckett and Godoy, 2008; Beckett and Sasson, 2004; Weaver, 2007). The shapeshifting of penal logics is seen most starkly in the construction of Black communities and other people of color and marginalized groups as dangerous and in need of state intervention. Overt racist language never seems to disappear from the criminal legal and carceral landscapes; it is just transformed through coded language and stereotypical imagery that reflect the same underlying narrative about marginalized populations as before (Duxbury, 2023; Pfeiffer and Hu, 2024). In existing research and political rhetoric, the bandying about and weaponization of the terms "urban", "taxpayer", "welfare queen", "deadbeat dad", and "criminal alien" all exist within the same narrative universe to create delineations between whiteness and the racialized other. In line with the desire to glom onto the fantasies of a post-racial society, scholars have shown that the language of these narratives shifts to attempt to erase explicit mentions of race to obscure the forces of racism, anti-Blackness, misogynoir, nationalist sentiment, and ableism that pervade our institutions and systems (Alexander, 2010; Ben-Moshe, 2020; Bonilla-Silva, 2003; Cammett, 2014; Cházaro, 2016; Murakawa and Beckett, 2010). Future research should explore how even after reform attempts and calls for change there is a continued racial disproportionality in criminal legal contact and heightened consequences due to the creation, activation, and reactivation of these underlying narratives that challenges the rights and place of Black people, people of color, and other marginalized people and groups.

In line with Swidler's (2001) formulation of culture as enabling individual agency/opportunism and Goffman's (1959) idea of impression management for outside audiences, we argue that lawmakers engage in a type of strategic performance to consciously construct an image of their state through their mobilization of tried-and-true penal logics that are considered politically safe for replication over time. Logics and narratives never die; they are often recycled, reimagined, resurrected depending on the broader political and economic contexts that are potent and relevant to sell punitive and exploitative policy agendas (Beckett and Sasson, 2004). As evidenced by the practice of pay-to-stay, the rhetoric of containment has been dominant, attempting to devise ways to hide incarceration, to shift the population to other places and spaces, to monetize it so it becomes less "inconvenient" for the state (Gilmore, 2007). Even in states and local contexts lauded for their reform-minded shifts, logics of punitiveness continue, shifting blame for social ills to those most directly affected by inequities. We see places like California where, on

the one hand, the state is ushering in protections and reforms for currently and formerly incarcerated people, including shifting one of their carceral facilities, San Quentin, into a rehabilitative facility. Yet, in the same breath, the state is concocting punitive measures against unhoused populations, touting narratives of personal responsibility embedded within the imagery of freeloaders and thinly veiled racialized and poverty tropes that have been used against and toward incarcerated people and other marginalized groups to ensure the legislative success of punitive policies and practices (Bonds, 2009; Ding, 2024; Gilmore, 2007).

Declaration of conflicting interests

The authors declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Funding

The authors disclosed receipt of the following financial support for the research, authorship, and/or publication of this article: This work was supported by the American Bar Foundation, Arnold Ventures, Institute for Humane Studies, George Mason University.

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References

Alexander M (2010) *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. New York: The New Press.

Aviram H (2015) *Cheap on Crime: Recession-Era Politics and the Transformation of American Punishment*. Oakland: University of California Press.

Bailey M and Peirce J (2021) Reversing the rural jail population boom. *Idaho Law Review* 57: 525.

Beckett K (2018) The politics, promise, and peril of criminal justice reform in the context of mass incarceration. *Annual Review of Criminology* 1(1): 235–259.

Beckett K, Beach L, Knaphus E, et al. (2018) US criminal justice policy and practice in the twenty-first century: toward the end of mass incarceration? *Law & Policy* 40(4): 321–345.

Beckett K and Godoy A (2008) Power, politics, and penality: punitiveness as backlash in American democracies. In: *Studies in Law, Politics and Society*. Bingley: Emerald Group Publishing Limited, 139–173.

Beckett K and Murakawa N (2012) Mapping the shadow carceral state: toward an institutionally capacious approach to punishment. *Theoretical Criminology* 16(2): 221–244.

Beckett K and Sasson T (2004) *The Politics of Injustice: Crime and Punishment in America*. Thousand Oaks: Sage.

Ben-Moshe L (2020) *Decarcerating Disability: Deinstitutionalization and Prison Abolition*. Minneapolis: University of Minnesota Press.

Bonds A (2009) Discipline and devolution: constructions of poverty, race, and criminality in the politics of rural prison development. *Antipode* 41(3): 416–438.

Bonilla-Silva E (2003) *Racism without Racists: Color-blind Racism and the Persistence of Racial Inequality in America*. Lanham: Rowman & Littlefield.

Brown EK (2013) Foreclosing on mass incarceration? State and correctional policy enactments and the great recession. *Criminal Justice Political Review* 24(3): 317–337.
Buchanan KS (2007) It could happen to you: pay-to-stay jail upgrades. *Michigan Law Review First Impressions* 106(60): 60–117.
Cammett A (2014) Deadbeat dads & welfare queens: how metaphor shapes poverty law. *BCJL & Social Justice* 34: 233.
Campbell M, Schoenfeld H and Vaughn P (2020) Same old song and dance? An analysis of legislative activity in a period of penal reform. *Punishment & Society* 22(4): 389–412.
Campbell MC and Schoenfeld H (2013) The transformation of America's penal order: a historicized political sociology of punishment. *American Journal of Sociology* 118(5): 1375–1423.
Carson A and Anderson E (2016) *Bureau of Justice Statistics (BJS)—Prisoners in 2015*. NCJ 250229. Washington, DC: Bureau of Justice Statistics.
Cházaro A (2016) "Challenging the" criminal alien "paradigm". *UCLA Law Review* 63: 594.
Clear TR and Frost NA (2013) *The Punishment Imperative: The Rise and Failure of Mass Incarceration in America*. New York, USA: New York University Press.
Dagan D and Teles S (2016) *Prison Break: Why Conservatives Turned Against Mass Incarceration*. Oxford, New York: Oxford University Press.
Ding J (2024) Gov. Newsom passed a new executive order on homeless encampments. Here's what it means. *SFGate*. Available at: https://www.sfgate.com/news/article/gov-newsom-passed-a-new-executive-order-on-19597638.php
Duxbury SW (2023) A threatening tone: homicide, racial threat narratives, and the historical growth of incarceration in the United States, 1926–2016. *Social Forces* 102(2): 561–585.
Eisen LB (2015) Paying for your time: how charging inmates fees behind bars may violate the excessive fines clause. *Loyola Journal of Public Interest Law* 15(319).
Feeley MM and Simon J (1992) The new penology: notes on the emerging strategy of corrections and its implications. *Criminology; An Interdisciplinary Journal* 30(4): 449–474.
Feola M (2020) Blood from a turnip: debt, race, and expropriation in penal capitalism. *Theory & Event* 23(4): 877–901.
Fernandes AD, Friedman B and Kirk G (2022) The "damaged" state vs. the "willful" nonpayer: pay-to-stay and the social construction of damage, harm, and moral responsibility in a rent-seeking society. *RSF: Russell Sage Foundation Journal of the Social Sciences* 8(1): 82–105.
Friedman B (2021) Unveiling the necrocapitalist dimensions of the shadow carceral state: on pay-to-stay to recoup the cost of incarceration. *Journal of Contemporary Criminal Justice* 37(1): 66–87.
Friedman B, Fernandes AD and Kirk G (2021) "Like if you get a hotel bill": consumer logic, pay-to-stay, and the production of incarceration as a public commodity. *Sociological Forum* 36(3): 735–757.
Friedman B and Pattillo M (2019) Statutory inequality: the logics of monetary sanctions in state law. *RSF: The Russell Sage Foundation Journal of the Social Sciences* 5(1): 173–196.
Frost NA and Clear TR (2018) Theories of mass incarceration. In: *The Oxford Handbook of Prisons and Imprisonment*. Oxford: Oxford University Press, 104–124.
Garcia-Hallett J (2022) *Invisible Mothers: Unseen Yet Hypervisible After Incarceration*. Berkeley: University of California Press.
Garland D (2001) *The Culture of Control: Crime and Social Order in Contemporary Society*. Chicago: University of Chicago Press.
Gibson-Light M (2018) Ramen politics: informal money and logics of resistance in the contemporary American prison. *Qualitative Sociology* 41(3): 1–22.
Gibson-Light M (2022) *Orange Collar Labor: Work and Inequality in Prison*. Oxford: Oxford University Press.

Gilmore RW (2007) *Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California*. Oakland: University of California Press.
Goffman E (1959) *The Presentation of Self in Everyday Life*. New York: Doubleday.
Goldstein R, Sances MW and Young YH (2020) Exploitative revenues, law enforcement, and the quality of government service. *Urban Affairs Review* 56(1): 5–31.
Goodman P, Page J and Phelps M (2015) The long struggle: an agonistic perspective on penal development. *Theoretical Criminology* 19(3): 315–335.
Gottschalk M (2006) *The Prison and the Gallows: The Politics of Mass Incarceration in America*. Cambridge: Cambridge University Press.
Gottschalk M (2016) *Caught: The Prison State and the Lockdown of American Politics. Third printing, first paperback printing*. Princeton Oxford: Princeton University Press.
Green DA (2015) US penal-reform catalysts, drivers, and prospects. *Punishment & Society* 17(3): 271–298.
Harris A (2016) *A Pound of Flesh: Monetary Sanctions as Punishment for the Poor*. New York: Russell Sage Foundation.
Hinton E and Cook D (2021) The mass criminalization of Black Americans: a historical overview. *Annual Review of Criminology* 4: 261–286.
King RS and Mauer M (2002) *State Sentencing and Corrections Policy in an Era of Fiscal Restraint*. Washington, DC: Sentencing Project.
Kirk DS and Wakefield S (2018) Collateral consequences of punishment: a critical review and path forward. *Annual Review of Criminology* 1: 171–194.
Kirk G, Friedman B and Fernandes AD (2020) Who pays for the welfare state? Austerity politics and the origin of pay-to-stay fees as revenue generation. *Sociological Perspectives* 63(6): 921–938.
Lara-Millán A (2021) *Redistributing the Poor: Jails, Hospitals, and the Crisis of Law and Fiscal Austerity*. New York: Oxford University.
Lofstrom M and Raphael S (2013) Impact of realignment on county jail populations. *Public Policy Institute of California*. Available at: www.ppic.org/main/publication.asp.
Martin KD (2018) Monetary myopia: an examination of institutional response to revenue from monetary sanctions for misdemeanors. *Criminal Justice Policy Review* 29(6–7): 630–662.
Martin KD, Sykes BL, Shannon S, et al. (2018) Monetary sanctions: legal financial obligations in US systems of justice. *Annual Review of Criminology* 1: 471–495.
Miller RJ (2021) *Halfway Home: Race, Punishment, and the Afterlife of Mass Incarceration*. Boston: Little, Brown.
Miller RJ and Alexander A (2015) The price of carceral citizenship: punishment, surveillance, and social welfare policy in an age of carceral expansion. *Michigan Journal of Race & Law* 21: 291.
Mills A and Shapiro DM (2016) Stop suing ex-prisoners to recover room-and-board costs. *Chicago Tribune*. Available at: https://www.chicagotribune.com/2016/08/23/stop-suing-ex-prisoners-to-recover-room-and-board-costs/.
Mills S and Lighty T (2015) State sues prisoners to pay for their room, board. *Chicago Tribune*, 3 November.
Murakawa N (2014) *The First Civil Right: How Liberals Built Prison America*. Oxford; New York: Oxford University Press.
Murakawa N and Beckett K (2010) The penology of racial innocence: the erasure of racism in the study and practice of punishment. *Law & Society Review* 44(3–4): 695–730.
National Research Council (2014) *The Growth of Incarceration in the United States: Exploring Causes and Consequences*. Washington, D.C: The National Academies Press.
Page J (2013a) Punishment and the penal field. In: Simon J and Sparks R (eds) *The SAGE Handbook of Punishment and Society*. London: SAGE Publications Ltd, 152–166.

Page J (2013b) *The Toughest Beat: Politics, Punishment, and the Prison Officers Union in California*. Oxford: Oxford University Press.
Page J and Soss J (2017) Criminal justice predation and neoliberal governance. In: Schram SF and Pavlovskaya M (eds) *Rethinking Neoliberalism*. New York: Routledge, 141–161.
Page J and Soss J (2021) The predatory dimensions of criminal justice. *Science* 374(6565): 291–294.
Paik L and Packard C (2023) Broadening the lens of procedural justice beyond the courtroom: a case study of legal financial obligations in the juvenile court. *Law & Social Inquiry* 49(2): 679–705.
Percival GL (2015) *Smart on Crime: The Struggle to Build a Better American Penal System*. Boca Raton: CRC Press.
Pfaff J (2017) *Locked In: The True Causes of Mass Incarceration—And How to Achieve Real Reform*. New York: Basic Books.
Pfeiffer D and Hu X (2024) Deconstructing racial code words. *Law & Society Review* 58(2): 294–328.
Roberts DE (2003) The social and moral cost of mass incarceration in African American communities. *Stanford Law Review* 56: 1271.
Rubin AT (2019) Interrogating the penal pendulum: an introduction to the review symposium on *Breaking the Pendulum: The Long Struggle over Criminal Justice*. *Law & Social Inquiry* 44(3): 791–798.
Rubin AT (2021) The promises and pitfalls of path dependence frameworks for analyzing penal change. *Punishment & Society*: 14624745211043544. doi: 10.1177/14624745211043543.
Schoenfeld H (2016) A research agenda on reform: penal policy and politics across the states. *The ANNALS of the American Academy of Political and Social Science* 664(1): 155–174.
Seeds C (2017) Bifurcation nation: American penal policy in late mass incarceration. *Punishment & Society* 19(5): 590–610.
Silber R, Subramanian R and Spotts M (2016) *Justice in Review: New Trends in State Sentencing and Corrections 2014-2015*. New York: Vera Institute of Justice.
Soss J and Schram SF (2007) A public transformed? Welfare reform as policy feedback. *American Political Science Review* 101(1): 111–127.
Subramanian R, Moreno R and Broomhead S (2014) *Recalibrating Justice: A Review of 2013 State Sentencing and Corrections Trends*. New York: Vera Institute of Justice.
Swidler A (1986) Culture in action: symbols and strategies. *American Sociological Review* 51(2): 273–286.
Swidler A (2001) *Talk of Love: How Culture Matters*. Chicago: University of Chicago Press.
Swidler A (2008) Comment on Stephen Vaisey's "Socrates, Skinner, and Aristotle: three ways of thinking about culture in action". *Sociological Forum* 23(3): 614–618.
Tavory I and Timmermans S (2014) *Abductive Analysis: Theorizing Qualitative Research*. Chicago: University of Chicago Press.
Wacquant L (2009) *Punishing the Poor: The Neoliberal Governing of Insecurity*. Durham: Duke University Press.
Weaver V M (2007) Frontlash: Race and the Development of Punitive Crime Policy. *Studies in American Political Development* 21(2): 230–265.
Weisberg R (2007) Pay-to-stay California jails and the value of systemic self-embarrassment. *Michigan Law Review First Impressions* 106(55).
Western B (2006) *Punishment and Inequality in America*. New York, NY: Russell Sage.
Wool J and Stemen D (2004) Changing fortunes or changing attitudes? Sentencing and corrections reforms in 2003. *Federal Sentencing Reporter* 16(4): 294–306.
Xenakis S and Cheliotis LK (2018) Wither neoliberal penality? The past, present, and future of imprisonment in the US. *Punishment & Society* 21(2): 187–206.