

January 2018

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### Recommended Citation

Mosteller, Jeremiah (2018) "Proportional Punishment: Does It Lead to More Crime?," *Liberty University Law Review*. Vol. 12 : Iss. 2 , Article 5.

Available at: [https://digitalcommons.liberty.edu/lu\\_law\\_review/vol12/iss2/5](https://digitalcommons.liberty.edu/lu_law_review/vol12/iss2/5)

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## ARTICLE

# PROPORTIONAL PUNISHMENT: DOES IT LEAD TO MORE CRIME?

*Jeremiah Mosteller*<sup>†</sup>

### ABSTRACT

Competing claims relating to the effectiveness of certain correctional solutions, and fifty-one different sets of laws and criminal penalties across jurisdictions complicate the topics of crime and incarceration in the United States. An example of the complexities inherent in our current justice system can be seen in the varying definitions and thresholds for theft crimes. The significant disparities among jurisdictions make it difficult to characterize our system as just and proportional. Over the past fifteen years, many states have attempted to remedy this state of affairs by raising the statutory felony thresholds for theft crimes to account for inflation and other factors. While critics argued against such reforms by warning of an increase in theft crimes in jurisdictions with higher thresholds, data refutes these claims. This Article seeks to demonstrate that when states adopt a heightened monetary felony theft threshold, those states advance more proportional accountability, while still maintaining public safety.

### I. INTRODUCTION

The issues of crime, incarceration, and justice in America are fraught with competing perspectives and opposing data analysis. Increasing prison sentences, correctional populations, and government expenditures on the corrections system in the past decades explain why criminal justice reform has become a major focus in both political and scholarly circles. The average prison sentence imposed by judges across the country has increased significantly since the 1980s.<sup>1</sup> The United States currently incarcerates over

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1. See *A Matter of Time: The Causes and Consequences of Rising Time Served in American's Prison*, URB. INST. (July 2017), [http://apps.urban.org/features/long-prison-terms/a\\_matter\\_of\\_time\\_print\\_version.pdf](http://apps.urban.org/features/long-prison-terms/a_matter_of_time_print_version.pdf) (finding the average sentence length imposed in 44 states and the District of Columbia has increased since the 1980s); *Prison Time Surges for Federal Inmates*, THE PEW CHARITABLE TRUSTS (November 2015),

two million individuals in its state and federal jails and prisons—an increase of over 600 since 1960, no doubt partly due to increased sentence lengths.<sup>2</sup> These numbers and trends explain why states continue to pursue policy solutions which restructure their justice systems.

The vast majority of those incarcerated are in state correctional systems.<sup>3</sup> This emphasis on an incarceration-forward method of punishment comes at great expense to the taxpayer, on both a total expenditure and per capita basis. State correctional systems have combined expenditures totaling over \$71 million each year, an increase of 324 percent between 1979 and 2013.<sup>4</sup> This large sum is the result of increasing per capita cost. In fact, the current average annual cost of incarcerating an adult is \$38,000, while the average annual cost of incarcerating a young person in a youth prison is now \$112,000.<sup>5</sup> Despite tough sentencing regimes, states are not achieving their long-held public safety goals. More than three-quarters of those released from state correctional systems are rearrested within five years.<sup>6</sup> These numbers show that the criminal justice system in America is not effective in

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[http://www.pewtrusts.org/~media/assets/2015/11/prison\\_time\\_surges\\_for\\_federal\\_inmates.pdf](http://www.pewtrusts.org/~media/assets/2015/11/prison_time_surges_for_federal_inmates.pdf) (finding that the average sentence length had increased by twenty-months in the federal correctional system).

2. Danielle Keable & Lauren Glaze, *Correctional Populations in the United States 2015*, BUREAU OF JUST. STAT. (December 2016), <https://www.bjs.gov/content/pub/pdf/cpus15.pdf>; BUREAU OF JUSTICE STATISTICS, *State and Federal Prisoners, 1925-85*, U.S. DEPT. OF JUST. (October 1986), <https://www.bjs.gov/content/pub/pdf/sfp2585.pdf>.

3. E. Ann Carson & Elizabeth Anderson, *Prisoners in 2015*, BUREAU OF JUST. STAT. (December 2016), <https://www.bjs.gov/content/pub/pdf/p15.pdf>.

4. Stephanie Stullich, et al., *State and Local Expenditures on Corrections and Education*, U.S. DEP'T OF EDUC. (July 2016), <https://www2.ed.gov/rschstat/eval/other/expenditures-corrections-education/brief.pdf>.

5. The Council of Economic Advisors, *Economic Costs of Youth Disadvantage and High-Return Opportunities for Change*, EXECUTIVE OFF. OF THE PRESIDENT OF THE U.S. (July 2015), [https://obamawhitehouse.archives.gov/sites/default/files/docs/mbk\\_report\\_final\\_update1.pdf](https://obamawhitehouse.archives.gov/sites/default/files/docs/mbk_report_final_update1.pdf); Christian Henrichson & Ruth Delaney, *The Price of Prisons: What Incarceration Costs Taxpayer*, VERA INST. OF JUST. (July 20th, 2012), <http://archive.vera.org/sites/default/files/resources/downloads/price-of-prisons-updated-version-021914.pdf>; see also Richard A. Mendel, *No Place for Kids: The Case for Reducing Juvenile Incarceration*, ANNIE E. CASEY FOUND. (2011), <http://www.aecf.org/m/resourcedoc/aecf-NoPlaceForKidsFullReport-2011.pdf>.

6. Kim Steven Hunt & Robert Dumville, *Recidivism Among Federal Offenders: A Comprehensive Overview*, U.S. SENT'G COMMISSION (March 2016), [http://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2016/recidivism\\_overview.pdf](http://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2016/recidivism_overview.pdf); Matthew R. Durose, et al., *Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010*, BUREAU OF JUST. STAT. (April 2014), <https://www.bjs.gov/content/pub/pdf/rprts05p0510.pdf>.

detering future crime, despite its high cost. However, there is hope for reform. Over the past two decades, there have been concurrent nation-wide trends of falling crime rates and states decreasing reliance on incarceration.<sup>7</sup>

## II. FIFTY-ONE DIFFERENT SYSTEMS

The criminal justice system in America is divided into fifty-one different systems, which all coordinate to ensure public safety. Federal offenses are punishable under the federal criminal code through the federal court system, and sentences of incarceration are served in federal prisons.<sup>8</sup> The majority of crimes, however, are prosecuted and punished within the individual state jurisdictions and governed by state criminal codes passed by independent legislatures. While a vibrant picture of federalism, this results in fifty-one jurisdictions having different laws to regulate behavior that could potentially be found criminal.

State criminal law is often complex and voluminous. For example, Texas and Arizona each have over 1,700 and 4,000 criminal offenses on the books, respectively.<sup>9</sup> Alarming, these figures do not include the countless criminal penalties that may be imposed under regulations created by state

7. The Pew Charitable Trusts, *National Imprisonment and Crime Rates Continue to Fall*, THE PEW CHARITABLE TRUSTS (December 2016), [http://www.pewtrusts.org/~media/assets/2016/12/national\\_imprisonment\\_and\\_crime\\_rate\\_s\\_continue\\_to\\_fall\\_web.pdf](http://www.pewtrusts.org/~media/assets/2016/12/national_imprisonment_and_crime_rate_s_continue_to_fall_web.pdf); The Pew Charitable Trusts, *33 States Reform Criminal Justice Policies Through Justice Reinvestment*, THE PEW CHARITABLE TRUSTS (November 2016), [http://www.pewtrusts.org/~media/assets/2017/08/33\\_states\\_reform\\_criminal\\_justice\\_policies\\_through\\_justice\\_reinvestment.pdf](http://www.pewtrusts.org/~media/assets/2017/08/33_states_reform_criminal_justice_policies_through_justice_reinvestment.pdf); Justice Center, *Justice Reinvestment: Reinvest in What Works*, THE COUNCIL OF ST. GOV'T (2017), <https://csgjusticecenter.org/jr/about/>; See also Federal Bureau of Investigation, *Table 1: Crime in the United States by Volume and Rate per 100,000 Inhabitants, 1997-2016*, U.S. DEP'T OF JUST. (2017), <https://ucr.fbi.gov/crime-in-the-u.s/2016/crime-in-the-u.s.-2016/topic-pages/tables/table-1> (while there has been a near uniform decrease in overall crime rates across the country since the 1990s, the violent crime rate in America has increased in the past two years).

8. The federal criminal code contains over 4,500 statutory crimes and there are currently over 300,000 federal administrative code provisions which carry criminal penalties. See John C. Coffee Jr., *Does "Unlawful" Mean "Criminal"?: Reflection on the Disappearing Tort/Crime Distinction in American Law*, 71 B.U. L. REV. 193, 2016 (1991); John S. Baker, *Revisiting the Explosive Growth of Federal Crimes*, HERITAGE FOUND. (June 16, 2008), <http://www.heritage.org/research/reports/2008/06/revisiting-the-explosive-growth-of-federal-crimes>; See also Susan R. Klein & Ingrid B. Grobey, *Dubunking Claims of Over-Federalization of Criminal*, 62 EMORY L. J. 1, 28 (2012).

9. Mark A. Levin, *At the State Level, So-Called Crimes Are Here, There, Everywhere*, 28 CRIM. J. 4 (2013), [http://www.americanbar.org/content/dam/aba/publications/criminal\\_justice\\_magazine/sp13\\_state\\_level.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/criminal_justice_magazine/sp13_state_level.authcheckdam.pdf).

agencies and local municipalities. This overwhelming number of criminal laws and regulations (in addition to varying sentences imposed for the same conduct in different jurisdictions) results in a justice system that lacks a structure of proportional punishment and uniform effectiveness in the sentences imposed across jurisdictions. While jurisdictional freedom is a hallmark of our democracy and should be protected, states must safeguard fairness in their justice systems and consider reforms that will ensure the punishments imposed for wrongful conduct are proportional to the harm caused. This Article proposes that the punishment imposed for a theft crime should be similar across all jurisdictions—federal and state—in an effort to ensure a justice system that restores both the harmed and responsible parties and provides positive public safety outcomes.

### III. A PATCHWORK OF LAWS

Theft, generally thought of as a crime itself, in fact refers to a whole category of crimes, such as larceny, robbery, burglary, embezzlement, and receipt of stolen property.<sup>10</sup> Many of these crimes are no longer defined by traditional common law principles. Instead, various state jurisdictions have diverse conduct requirements that must be met for a conviction of these crimes to be upheld. The states also vary in the thresholds that qualify an individual's actions for felony classification. This diversity of elements and punishments renders our criminal justice system disproportional and ineffective in achieving our goal of preventing recidivism.

The elements and definitions that must be satisfied for conviction of a theft or property-related crime vary by jurisdiction. The statutes enacted for the crime of robbery exemplify how differing state statutory regimes result in more, or less, conduct being covered by the elements or definition of the crime.<sup>11</sup> For example, the state of Washington defines robbery as the following:

A person commits robbery when he or she unlawfully takes personal property from the person of another or in his or her presence against his or her will by the use or threatened use of

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10. See e.g. CAL. PENAL CODE § 496 (West 2017); N.Y. PENAL LAW § 155.05 (McKinney 2017); TEX. PENAL CODE ANN. § 29.02 (West 2017); VA. CODE ANN. § 18.2-96 (2017); N.C. GEN. STAT. § 14-51 (2017).

11. The federal government has a statute differing from the two state statutes discussed below that applies only to property of the government itself. See 18 U.S. C. § 2112 (2017).

immediate force, violence, or fear of injury to that person or his or her property or the person or property of anyone.<sup>12</sup>

In comparison, Kansas provides a less comprehensive definition in its statutes, which results in less conduct being covered by the statute itself: “Robbery is knowingly taking property from the person or presence of another by force or by threat of bodily harm to any person.”<sup>13</sup>

A similar instance of divergent definitions exists with the crime of receiving stolen property. In Alabama, this crime is committed when the following definition is satisfied:

A person commits the crime of receiving stolen property if he intentionally receives, retains or disposes of stolen property knowing that it has been stolen or having reasonable grounds to believe it has been stolen, unless the property is received, retained or disposed of with intent to restore it to the owner.<sup>14</sup>

In another southern state, Texas, the crime is categorized as “unlawful appropriation of property” and occurs when “the property is stolen and the actor appropriates the property knowing it was stolen by another.”<sup>15</sup>

The crime of embezzlement is more complicated because many states not only have definitions but have also changed the name of the crime that would be charged for similar conduct. In South Dakota, where the crime is called “misappropriation of property held in trust,” it is defined as:

Any person, who has been entrusted with the property of another and who, with intent to defraud, appropriates such property to a use or purpose not in the due and lawful execution of his or her trust, is guilty of theft. A distinct act of taking is not necessary to constitute theft pursuant to this section.<sup>16</sup>

Right across the border from South Dakota, Wyoming has a consolidated theft statute providing one single definition for all theft crimes. In Wyoming, embezzlement occurs when someone “exercises unauthorized control over or makes an unauthorized transfer of an interest in the

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12. WASH. REV. CODE § 9A.56.190 (2017).

13. KAN. STAT. ANN. § 21-5420 (2017).

14. ALA. CODE § 13A-8-16 (2017).

15. TEX. PENAL CODE ANN. § 31.03 (West 2017). In addition to state statutes which apply to this type of conduct, federal law will apply when the value of the property exceeds \$5,000 and the property has “crossed a State or United States boundary after being stolen, unlawfully converted, or taken.” See 18 U.S.C. § 2315 (2017).

16. S.D. CODIFIED LAWS § 22-30A-10 (2017).

property of another person with the purpose of depriving the other person of the property.”<sup>17</sup> However, the federal government has over twenty-nine separate forms of embezzlement, all containing different elements.<sup>18</sup>

While many of these differences in categories and definitions are minimal, even slight variations in statutory configurations cause significant differences in the punishment someone can receive for certain acts in bordering states. For example, someone who takes property from another who believes the taker is going to cause harm to another’s property with a firearm would receive vastly different charges in the states of Washington and Kansas. This individual could be charged with the crime of robbery in the state of Washington, but not Kansas.<sup>19</sup> This difference results because Kansas only applies the definition of robbery to conduct involving force or threat of force, but Washington also includes harm to “property of another” as an alternative to actual force. In Washington, the individual would be charged with robbery and subject to a maximum sentence of life imprisonment and a \$50,000 fine.<sup>20</sup> In Kansas, this conduct would result in a conviction for theft, classified as either a felony or misdemeanor based upon the value of the property. A criminal conviction for theft in Kansas would carry a penalty ranging from incarceration in a county jail for less than a year to incarceration in a state prison for eleven years.<sup>21</sup> This illustrates how criminal charges and subsequent penalties received for the same actions can be different not based on the conduct itself, but an individual’s geographic location at the time the conduct occurred.

A second area of the statutory regimes related to theft that complicates criminal law is the felony theft threshold. This threshold is a mechanism in criminal law, frequently called an “aggravating factor,” that determines the monetary value of the property that must be taken before conduct is considered a felony. In North Carolina, the determination of whether larceny of goods is a misdemeanor or felony depends on whether or not the value of the property exceeds \$1,000.<sup>22</sup> This classification results in a significantly different form or length of punishment. If the property has a

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17. WYO. STAT. ANN. § 6-3-402 (2017).

18. 18 U.S.C. §§ 641-70 (2017).

19. Unlike the Washington statute quoted above, the Kansas statute for robbery does not allow fear of harm to the property of another as a means of satisfying the statutory requirements for robbery. See KAN. STAT. ANN. § 21-5420 (2017).

20. WASH. REV. CODE § 9A.20.021 (2017).

21. KAN. STAT. ANN. § 25-5801 (2017); *Id.* at § 22-6602; Kansas Sentencing Commission, *Sentencing Range – Nondrug Offenses*, KANSAS SENT’G COMMISSION (2017), <https://sentencing.ks.gov/docs/default-source/2017-forms/2017-nondrug-grid.pdf?sfvrsn=0>.

22. N.C. GEN. STAT. § 14.72.

value below \$1,000, the conviction would be a Class 1 misdemeanor and would result in a sentence of one to 120 days of incarceration in state prison, probation, or some form of community treatment or programming.<sup>23</sup> If the property is valued equal to or in excess of \$1,000, the conviction would be a Class H felony and result in a sentence range of five months in community treatment or programming to twenty months in state prison.<sup>24</sup> As seen in this example, this distinction between whether conduct is considered a felony or misdemeanor is important because it determines the method of accountability that will be imposed for that wrongful conduct.

Today, in the United States, felony theft thresholds range from \$200 in New Jersey to \$2,500 in Texas and Wisconsin.<sup>25</sup> The average value of these thresholds is \$1,000.<sup>26</sup> Advocates argue \$1,000 is an appropriate figure because inflation and technological advances have disproportionately increased the value of goods in excess of the lower thresholds still in existence in many states. For example, stealing a pair of Air Jordan 1 Retro sneakers, valued at \$549, would be considered a felony in the state of Virginia since its monetary worth exceeds the \$500 threshold imposed by state law. However, stealing this same pair of sneakers across the border in any of the states neighboring Virginia would not lead to felony charges since their thresholds are all placed at \$1,000. These drastically differing thresholds create a system that is not characterized by proportional and consistent punishments being imposed for the same crimes and level of harm caused.

#### IV. MAKING PUNISHMENT FOR THEFT MORE PROPORTIONAL

America's correctional system has seen significant growth since the 1960s in both the number of individuals who are incarcerated and the length of sentences imposed for crimes.<sup>27</sup> Notwithstanding the fact that

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23. N.C. GEN. STAT. §§ 14.72; 15A-1340.11; 15A-1340.23.

24. N.C. GEN. STAT. §§ 14.72; 15A-1340.11; 15A-1340.13; 15A-1340.17.

25. N.J. REV. STAT. § 2C:20-2 (2013); TEX. PENAL CODE ANN. § 31.03 (West 2017); WIS. STAT. § 943.20 (2017); VA. CODE ANN. § 18.2-95 (2017).

26. See Appendix A.

27. Scholars have found that the rise of our correctional populations can be attributed to increased sentence lengths, increased incarceration for minor offenses, and increased punishments for drug crimes and not from property crime, which has decreased by forty-three percent since 1997. See JEREMY TRAVIS, BRUCE WESTERN, & STEVE REDBUM, *THE GROWTH OF INCARCERATION IN THE UNITED STATES: EXPLORING CAUSES AND CONSEQUENCES* (The National Academies Press 2014); Federal Bureau of Investigations, *supra* note 7.

America's crime rates decreased significantly since the 1990s, the majority of jurisdictions still saw increased prison populations until the last few years.<sup>28</sup> During the recession of 2007-2009, many states facing budget shortfalls began to look for areas where cost savings could safely be achieved in state budgets. This budgetary pressure arose around the same time that members of both parties were becoming increasingly aware of the need for changes in our American justice system, given the inverse relationship between decreasing crime and increasing prison populations.

Advocating from a Christian worldview perspective, Prison Fellowship's founder, Chuck Colson, mobilized Christian policymakers and citizens to seek a justice system that restored and remembered those who were in prison. His efforts during the 1990s and 2000s helped to craft support within the Christian community for positive changes from the "hard-on-crime" rhetoric. This alignment of priorities caused many jurisdictions across the country to begin to adopt evidence-based reforms of their criminal justice systems, which would both increase public safety and decrease taxpayer spending.<sup>29</sup>

Punishment for a particular crime should not be based upon the jurisdiction in which someone commits a crime, but rather should be a just and proportional response to the offense committed. Our justice systems should impose a similar level of punishment for the same conduct in every jurisdiction, based upon the level of harm caused by the wrongful act(s). In an effort to make the punishment for theft crimes more proportional and reduce large discrepancies among the punishments imposed in different states for theft crimes, an overwhelming majority of states have sought to

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28. The violent crime rate decreased approximately thirty-seven percent and the property crime rate decreased forty-three percent between 1997 and 2016 while the number of individuals incarcerated grew by approximately twenty-three percent. See Federal Bureau of Investigations, *Crime in the United States by Volume and Rate per 100,000 Inhabitants, 1997-2016*, U.S. DEP'T OF JUST. (September 2017), <https://ucr.fbi.gov/crime-in-the-u.s/2016/crime-in-the-u.s.-2016/topic-pages/tables/table-1>; Danielle Kaeble & Lauren Glaze, *Correctional Populations in the United States, 2015*, BUREAU OF JUST. STAT. (December 2016), <https://www.bjs.gov/content/pub/pdf/cpus15.pdf>; Janet Reno, et al., *Correctional Populations in the United States, 1997*, BUREAU OF JUST. STAT. (November 2000), <https://www.bjs.gov/content/pub/pdf/cpus97.pdf>.

29. Evidence-based reforms or evidence-based practices are legislative or policy solutions which are based on scholarly literature or empirical research showing the effectiveness of certain interventions or reforms to reduce recidivism or increase public safety. See Craig E. Henderson, et. al., *Associations among state and local organizational contexts: Use of evidence-based practices in the criminal justice system*, 103 DRUG & ALCOHOL DEPENDENCE S23 (2009); Grant Duwe, *Rethinking Prison: A Strategy for Evidence Based Reform*, AM. ENTERPRISE INST. (November 2017), <http://www.aei.org/wp-content/uploads/2017/11/Rethinking-Prison.pdf>.

adopt some manner of reforms to their theft laws. Legislation has successfully increased felony theft thresholds in many jurisdictions but, as this Article displays, there still exists a large disparity between the felony theft thresholds imposed on theft crimes across the country.<sup>30</sup> For our justice system in American to truly be characterized by proportional punishment, we must ensure that the punishments for the same conduct do not vary widely based on the jurisdictions where that conduct occurs.

Oklahoma was the first state to alter its felony theft threshold in recent history. It increased its threshold from only \$50 in 2001 to its current threshold of \$1,000.<sup>31</sup> Thirty-seven other states increased their felony theft thresholds during this same time period, resulting in the average felony theft threshold increasing from \$620 in 2001 to approximately \$1,000 in 2017.<sup>32</sup> Eight states, including Alabama and Colorado, increased their thresholds multiple times.<sup>33</sup> Louisiana, previously the nation's leading incarcerator, has increased its threshold three times, most recently in 2017, from just \$300 to \$1000.<sup>34</sup> Texas—a state previously known for hard-on-crime policies, but now heralded for its monumental criminal justice reform efforts—increased its threshold from \$1,500 to \$2,500 in 2015, even though its previous threshold already exceeded the national average.<sup>35</sup> Indiana, still below the average threshold for the country, saw the largest percentage increase from just a single penny to \$750.<sup>36</sup> Two of the most recent states to adopt reforms to their felony theft thresholds for the first time are Hawaii

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30. For full list of current felony theft thresholds in American jurisdictions, see Appendix A.

31. H.R. 2751, 2016 Leg., 55th Reg. Sess. (Okla. 2016); S.R. 397, 2001 Leg., 40th Reg. Sess. (Okla. 2001).

32. For full lists of the felony theft threshold reforms in the United States, see Appendix B.

33. *Id.*

34. S.R. 220, 2017 Leg., 2017 Reg. Sess. (La. 2017); H.R. 791, 2014 Leg., 2014 Reg. Sess. (La. 2014); H.R. 555, 2009 Leg., 2009 Reg. Sess. (La. 2009).

35. H.R. 1396, 2015 Legis., 84th Reg. Sess. (La. 2015); *See e.g.*, Tina Rosenberg, *Even in Texas, Mass Imprisonment Is Going Out of Style*, N.Y. TIMES (February 14, 2017), <https://www.nytimes.com/2017/02/14/opinion/even-in-texas-mass-imprisonment-is-going-out-of-style.html>; *Texas leads the way in needed criminal justice reforms*, WASH. POST (January 28, 2014), [https://www.washingtonpost.com/opinions/texas-leads-the-way-in-needed-criminal-justice-reforms/2014/01/28/83919b72-879d-11e3-916e-001534b1e132\\_story.html?utm\\_term=.aa56470a6b0d](https://www.washingtonpost.com/opinions/texas-leads-the-way-in-needed-criminal-justice-reforms/2014/01/28/83919b72-879d-11e3-916e-001534b1e132_story.html?utm_term=.aa56470a6b0d).

36. H.R. 1006, 2013 Gen. Assemb., 118th Reg. Sess. (Ind. 2013).

and Tennessee, increasing their thresholds to \$750 and \$1,000, respectively, in 2016.<sup>37</sup>

Only twelve states have not increased their felony theft thresholds since 2001, but nine of those states already had a felony theft threshold equal to or higher than the current national average.<sup>38</sup> New Jersey has the lowest felony theft thresholds in the country at only \$200, having originally adopted this statute in 1979.<sup>39</sup> Other states that have not adopted reforms, like Pennsylvania and Wisconsin, have thresholds that already significantly exceed the national average.<sup>40</sup> With a majority of states already adopting these types of reforms, it may only be a matter of time before the remaining states with thresholds that are below the national average adopt similar reforms.

Scripture outlines God's heart for justice and provides a framework to carry out justice on earth.<sup>41</sup> A biblical model of justice requires those doling out punishment to remain mindful that both the party responsible for the harm and the harmed party have inherent dignity as a result of being created in the image of God.<sup>42</sup> Recognition of the inherent dignity of all humans requires us to promote accountability for the responsible party through proportional punishment,<sup>43</sup> to prioritize and respect the victims and validate their experience,<sup>44</sup> and to cultivate community engagement in the administration of justice.<sup>45</sup> Proportional punishment requires that the punishment fit the crime and the harm caused by the acts. Many components of the American justice system are not proportional because the sentences imposed by law are the result of reactionary lawmaking, or are

37. S.R. 2964, 2016 Leg., 29th Reg. Sess. (Haw. 2016); H.R. 2576, 2016 Gen. Assemb., 2019 Reg. Sess. (Tenn. 2016).

38. See Appendix C.

39. N.J. REV. STAT. § 2C:20-2 (2017); See also Bureau of Labor Statistics, *CPI Inflation Calculator*, U.S. DEP'T OF LABOR (November 2017), [https://www.bls.gov/data/inflation\\_calculator.htm](https://www.bls.gov/data/inflation_calculator.htm) (stating that in 2017, \$2,066.71 is the equivalent of \$200 in 1950).

40. 18 PA. CONS. § 3903 (2013); WIS. STAT. § 943.20 (2017).

41. *Exodus* 23:1-9; *Psalms* 33:5; *Proverbs* 29:4; *Isaiah* 42:4. Prison Fellowship has created a framework for justice that restores which contains eighteen different elements. See Prison Fellowship, *Justice That Restores*, PRISON FELLOWSHIP (2015), <https://www.prisonfellowship.org/about/justicereform/justice-that-restores/>.

42. *Matthew* 25:36-40; *Hebrews* 13:3.

43. *Exodus* 21:18-19; 23-27; *Exodus* 22: 1, 4, 9; *Leviticus* 6:1-7; *Leviticus* 24:19-22; *Numbers* 5:6-7; *Deuteronomy* 19:18-21; *Proverbs* 17:15; *Proverbs* 31:9; *Luke* 19:8.

44. *Numbers* 5:6-7; *Luke* 10:25-37; *Romans* 12:15.

45. *Isaiah* 32:18; *James* 1:25.

vastly different across the many jurisdictions in our legal system. Christian attorneys and American citizens should care about reforms to the felony theft thresholds located in the criminal law codes of all states because we value a just legal system in America. If we believe in a legal system that treats all individuals equally regardless of individual traits or circumstances, we must continue to seek additional reforms which will ensure all felony theft thresholds are similar across the various jurisdictions in America.

## V. THE EFFECT OF INCREASING FELONY THEFT THRESHOLDS

Many times, legal reforms continue to be adopted, not because they are effective or signify a moral path to follow, but because they are popular and trendy. On a macro level, it is clear that our country has realized significant decreases in crime rates since the 1990s.<sup>46</sup> Scholars estimate that our country's increased use of incarceration only accounts for approximately six to twenty-five percent of the decrease in crime rates.<sup>47</sup> Since increased reliance on incarceration cannot explain the decrease in crime rates, there must be other explanations. Many advocates and scholars argue that various reforms of criminal justice systems at the state level contributed significantly to this decrease in crime.<sup>48</sup>

While it is impossible to say with complete certainty that increasing the felony theft threshold will result in decreased theft crime rates in a state, the data on theft crime in America reveals a conclusion that should encourage proponents of reforms which increase the felony theft thresholds in a

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46. Between 1997 and 2016, the violent crime rate decreased by approximately thirty-seven percent and the property crime rate decreased by forty-three percent. See Federal Bureau of Investigation, *supra* note 7.

47. WILLIAM SPELMAN, *The Limited Importance of Prison Expansion*, in *THE CRIME DROP IN AMERICA* (Alfred Blumstein & Joel Wallman, 2005); Oliver Roeder, Lauren-Brooke Eisen, & Julia Bowling, *What Caused the Crime Decline?*, BRENNAN CTR. FOR JUST. (February 2015), [https://www.brennancenter.org/sites/default/files/publications/What\\_Caused\\_The\\_Crime\\_Decline.pdf](https://www.brennancenter.org/sites/default/files/publications/What_Caused_The_Crime_Decline.pdf).

48. See e.g. *Data Trends: South Carolina Criminal Justice Reform*, THE PEW CHARITABLE TRUSTS (September 2017), <http://www.pewtrusts.org/~media/data-visualizations/infographics/2017/data-trends-south-carolina-criminal-justice-reform.pdf>; Jake Horowitz, *States Take the Lead on Juvenile Justice Reform*, THE PEW CHARITABLE TRUSTS (May 11, 2017), <http://www.pewtrusts.org/en/research-and-analysis/analysis/2017/05/11/states-take-the-lead-on-juvenile-justice-reform>; Tony Fabelo, et al., *An Analysis of the State and Local Impact of the Texas Juvenile Justice Reforms*, COUNCIL OF ST. GOV'T & TEXAS A&M UNIV. (January 2015), <https://csgjusticecenter.org/wp-content/uploads/2015/01/texas-JJ-reform-closer-to-home.pdf>; Justice Center, *Justice Reinvestment in North Carolina: Three Years Later*, COUNCIL OF ST. GOV'T (November 2014), <https://csgjusticecenter.org/wp-content/uploads/2014/11/JRinNCThreeYearsLater.pdf>;

jurisdiction. According to the Federal Bureau of Investigation's Uniform Crime Reporting program, all but one state that reformed their felony thresholds since 2001 experienced a decrease in theft crime rates between 2001 and 2016.<sup>49</sup> Furthermore, these reductions in theft crime are similar to states which have not adopted such reforms.<sup>50</sup>

Nebraska and Wyoming saw the largest decreases in theft crime, with reductions of approximately forty-six percent and forty-two percent, respectively.<sup>51</sup> Nebraska increased its threshold to \$1,500 in 2015, and Wyoming adopted a threshold of \$1,000 in 2004.<sup>52</sup> Alaska saw the smallest decrease in theft crime of only nine percent, after increasing the state's threshold to \$1,000 in 2016.<sup>53</sup> New Mexico was the only reform jurisdiction to see an increase in theft crime, with an increase of almost sixty percent in its theft crime rates.<sup>54</sup>

Comparing reform and non-reform jurisdictions reveals that the thirty-seven states that adopted reforms to their felony theft thresholds realized an average decrease of approximately twenty-five percent in theft crime rates since 2001, compared to an average thirty-three percent decrease for non-reform states.<sup>55</sup> Those which adopted a reform increasing their threshold above the national average saw a decrease in theft crime of almost thirty percent.<sup>56</sup> This data reveals that increasing a jurisdiction's felony theft threshold does not result in increased property crime. In fact, such reforms appear to have no negative impact on crime within a jurisdiction but still lead to decreased taxpayer expenditures, a more just and equitable justice system, and more proportional justice system in our country.

## VI. CONCLUSION

The punishment for criminal acts should reflect proportional accountability, regardless of the jurisdiction in which it occurs. Being convicted of stealing a pair of sneakers in New Jersey will result in someone

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49. For the decrease in theft crime rates for individual jurisdictions adopting reforms, see Appendix B.

50. For a comparison of the crime rate changes in both reform and non-reform jurisdictions, see Appendix B-C.

51. See Appendix B.

52. *Id.*

53. *Id.*

54. *Id.*

55. For the data on theft crime rate reductions in reform and non-reform jurisdictions, see Appendix B-C.

56. See Appendix B.

being charged with a felony, whereas being convicted of the same crime in Pennsylvania would result in only a misdemeanor conviction. As a part of the comprehensive criminal justice reform package that have been adopted by jurisdictions across the country, many states have implemented legislation that increased the felony theft threshold within their criminal statutory regimes. While critics have been quick to warn that such reforms will lead to higher crime rates in these jurisdictions, crime data shows that this claim is incorrect. The FBI's Uniform Crime Reporting Program reveals that not only have states adopting this type of reform continued to see decreases in their theft crime rates, but they have also achieved reductions at levels that closely mirror the few jurisdictions which have not adopted this type of reform. Data surrounding the adoption of increased felony theft thresholds shows that such reforms do not lead to increased theft crime. This type of reform still allows states to achieve reduced crime rates, while also having a justice system that is characterized as just and imposes punishment proportional to the harm caused.

## APPENDIX A: FELONY THRESHOLDS ACROSS AMERICA

Threshold	States
\$200	NJ <sup>57</sup>
\$250	MA <sup>58</sup>
\$300	FL <sup>59</sup>
\$500	IL; KY; NM; VA <sup>60</sup>
\$650	NV <sup>61</sup>
\$750	HI; IN; MO; WA <sup>62</sup>
\$900	VT <sup>63</sup>
\$950	CA <sup>64</sup>
\$1000	AK; AR; AZ; IA; ID; LA; MD; MI; MN; MS; NC; ND; NH; NY; OH; OK; OR; SD; TN; WV; WY <sup>65</sup>
\$1500	AL; DE; GA; KS; MT; NE; RI; UT <sup>66</sup>
\$2000	PA; CO; CT; SC <sup>67</sup>
\$2500	TX; WI <sup>68</sup>

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57. N.J. REV. STAT. § 2C:20-2 (2013).

58. MASS. GEN. LAWS CH. 266, § 30 (2017).

59. FLA. STAT. § 812.014 (2017).

60. N.M. STAT. ANN. § 30-16-1 (2017); KY. REV. STAT. ANN § 514.030 (West 2017); 720 ILL. COMP. STAT. 5/16-1 (2017); VA. CODE ANN. § 18.2-95 (2017).

61. NEV. REV. STAT. § 205.220 (2017).

62. HAW. REV. STAT. § 708-831 (2017); BURNS IND. CODE ANN. § 35-43-4-2 (2017); R.S. Mo § 570.030 (2017); WASH. REV. CODE § 9A.56.040 (2017).

63. VT. STAT. ANN. tit. 13 § 2501 (2017).

64. CAL. PENAL CODE § 484 (West 2017).

65. ALASKA STAT. § 11.46.130 (2017); ARK. CODE ANN. § 5-36-103 (2017); ARIZ. REV. STAT. ANN. § 13-1802 (2017); IOWA CODE § 714.2 (2017); IDAHO CODE § 18-2407 (2017); LA. STAT. ANN. § 14.67 (2017); MD. CODE ANN. CRIM. LAW § 7-104 (West 2017); MICH. COMP. LAWS § 750.356 (2017); MINN. STAT. § 609.52 (2017); MISS. CODE ANN. § 97-17-41 (2017); N.C. GEN. STAT. § 14-72 (2017); N.D. CENT. CODE, § 12.1-23-04 (2017); N.H. REV. STAT. ANN. § 637:11 (2017); N.Y. PENAL LAW § 155.30 (McKinney 2017); OHIO REV. CODE ANN. 2913.02 (West 2017); OKLA. STAT. TIT. 21, § 1706 (2017); OR. REV. STAT. § 164.055 (2017); S.D. CODIFIED LAWS § 22-30A-17 (2017); TENN. CODE ANN. § 39-14-105 (2017); W. VA. CODE ANN. § 61-3-13 (2017); WYO. STAT. ANN. § 6-3-402 (2017).

66. ALA. CODE § 13A-8-4 (2017); DEL. CODE ANN. TIT. 11, § 841 (2017); GA. CODE ANN. § 16-8-12 (2017); KAN. STAT. ANN. § 21-5801 (2017); MONT. CODE ANN. § 45-6-301 (2017); NEB. REV. STAT. § 28-518 (2017); 11 R.I. GEN. LAWS § 11-41-5 (2017); UTAH CODE ANN. § 76-6-412 (WEST 2017).

67. 18 PA. CONS. STAT. § 3903 (2014); COLO. REV. STAT. ANN § 18-4-401 (West 2013); CONN. GEN. STAT. § 53A-124 (2009); S.C. CODE ANN. § 16-13-30 (2010).

## APPENDIX B: CHANGES IN THE FELONY THEFT THRESHOLD SINCE 2001

State	Change in Felony Threshold	Year of Reform	Decrease in Theft Crime Rate Since 2001 <sup>69</sup>
Oklahoma	\$50 to \$1000	2001 & 2016 <sup>70</sup>	29.12%
Missouri	\$150 to \$750	2002 & 2014 <sup>71</sup>	33.38%
Alabama	\$250 to \$1500	2003 & 2015 <sup>72</sup>	25.28%
Mississippi	\$250 to \$1000	2003 & 2014 <sup>73</sup>	25.08%
Kansas	\$500 to \$1500	2004 & 2016 <sup>74</sup>	31.15%
Wyoming	\$500 to \$1000	2004 <sup>75</sup>	42.08%
South Dakota	\$500 to \$1000	2005 <sup>76</sup>	11.90%
Arizona	\$250 to \$1000	2006 <sup>77</sup>	38.42%
New Mexico	\$250 to \$500	2006 <sup>78</sup>	-59.61% (increase)
Vermont	\$500 to \$900	2006 <sup>79</sup>	35.10%
Colorado	\$500 to \$2000	2007 & 2013 <sup>80</sup>	25.55%
Minnesota	\$500 to \$1000	2007 <sup>81</sup>	34.43%

68. TEX. PENAL CODE ANN. § 31.03 (West 2017); WIS. STAT. § 943.20 (2012).

69. All theft crime rate data is from the 2001 and 2016 Crime in the United States tables published by the Federal Bureau of Investigation. See Federal Bureau of Investigation, *Crime in the United States, by State, 2016*, DEP'T OF JUST. (September 2017), <https://ucr.fbi.gov/crime-in-the-u.s/2016/crime-in-the-u.s.-2016/topic-pages/tables/table-3>; Federal Bureau of Investigation, *Index of Crime by State, 2001*, DEP'T OF JUST. (2002), available at <https://ucr.fbi.gov/crime-in-the-u.s/2001>.

70. H.R. 2751, 55th Leg., 2nd Session (Okla. 2016); S.R. 397, 48th Leg., Reg. Sess. (Okla. 2001).

71. S.R. 491, 97th Gen. Assemb., 2nd Reg. Sess. (Mo. 2014); H.R. 1888, 91st Gen. Assemb., 2nd Reg. Sess. (Mo. 2002).

72. S.R. 67, 2015 Leg., Reg. Sess. (Ala. 2015); H.R. 491, 2003 Leg., Reg. Sess. (Ala. 2003).

73. H.R. 585, 2014 Leg., Reg. Sess. (Miss. 2014); H.R. 1121, 2003 Leg., Reg. Sess. (Miss. 2003).

74. H.R. 2462, 86th Leg., Reg. Sess. (Kan. 2016); H.R. 2271, 80th Leg., Reg. Sess. (Kan. 2004).

75. S.R. 66, 57th Leg., 2004 Budget Sess. (Wyo. 2004).

76. S.R. 43, 80th Leg., Reg. Sess. (S.D. 2005).

77. H.R. 2581, 47th Leg., Reg. Sess. (Ariz. 2006).

78. H.R. 80, 47th Leg., Reg. Sess. (N.M. 2006).

79. S.R. 265, 2006 Gen. Assemb., Reg. Sess. (Vt. 2006).

80. H.R. 1160, 69th Gen. Assemb., Reg. Sess. (Colo. 2013); S.R. 260, 66th Gen. Assemb., Reg. Sess. (Colo. 2007).

81. H.R., 829, 85th Leg., Reg. Sess. (Minn. 2007).

State	Change in Felony Threshold	Year of Reform	Decrease in Theft Crime Rate Since 2001 <sup>69</sup>
Connecticut	\$1000 to \$2000	2009 <sup>82</sup>	30.62%
Delaware	\$1000 to \$1500	2009 <sup>83</sup>	14.98%
Kentucky	\$300 to \$500	2009 <sup>84</sup>	14.73%
Louisiana	\$300 to \$1000	2009, 2014, & 2017 <sup>85</sup>	25.16%
Maryland	\$500 to \$1000	2009 <sup>86</sup>	38.09%
Montana	\$1000 to \$1500	2009 <sup>87</sup>	25.07%
Oregon	\$750 to \$1000	2009 <sup>88</sup>	37.04%
Washington	\$250 to \$750	2009 <sup>89</sup>	27.01%
California	\$400 to \$950	2010 <sup>90</sup>	19.52%
Illinois	\$300 to \$500	2010 <sup>91</sup>	38.02%
New Hampshire	\$500 to \$1000	2010 <sup>92</sup>	23.05%
South Carolina	\$1000 to \$2000	2010 <sup>93</sup>	26.33%
Utah	\$1000 to \$1500	2010 <sup>94</sup>	28.32%
Arkansas	\$500 to \$1000	2011 <sup>95</sup>	13.51%
Nevada	\$250 to \$650	2011 <sup>96</sup>	30.33%
Ohio	\$500 to \$1000	2011 <sup>97</sup>	29.49%
Georgia	\$500 to \$1500	2012 <sup>98</sup>	24.92%

82. H.R. 6576, 2009 Gen. Assemb., Reg. Sess. (Conn. 2009).

83. H.R. 113, 145th Gen. Assemb., Reg. Sess. (Del. 2009).

84. H.R. 369, 2009 Leg., Reg. Sess. (Ky. 2009).

85. S.R. 220, 2017 Leg., Reg. Sess. (La. 2017); H.R. 791, 2014 Leg., 2014 Reg. Sess. (La. 2014); H.R. 555, 2010 Leg., Reg. Sess. (La. 2010).

86. H.R. 66, 424th Gen. Assemb., Reg. Sess. (Md. 2009).

87. S.R. 476, 61st Leg., Reg. Sess. (Mont. 2009).

88. H.R. 2323, 75th Leg., Reg. Sess. (Or. 2009).

89. S.R. 6167, 61st Leg., Reg. Sess. (Wash. 2009).

90. A.R. 2372, 2009-2010 Leg., Reg. Sess. (Cal. 2010).

91. S.R. 3797, 96th Gen. Assemb., Reg. Sess. (Ill. 2010).

92. S.R. 205, 161st Gen. Ct., Reg. Sess. (N.H. 2010).

93. S.R. 1154, 118th Gen. Assemb., Reg. Sess. (S.C. 2010).

94. S.R. 10, 58th Leg., Gen. Sess. (Utah 2010).

95. S.R. 570, 88th Gen. Assemb., Reg. Sess. (Ark. 2011).

96. A.R. 142, 76th Gen. Assemb., Reg. Sess. (Nev. 2011).

97. H.R. 86, 129th Gen. Assemb., Reg. Sess. (Ohio 2011).

98. H.R. 1176, 151st Gen. Assemb., Reg. Sess. (Ga. 2011).

State	Change in Felony Threshold	Year of Reform	Decrease in Theft Crime Rate Since 2001 <sup>69</sup>
Rhode Island	\$500 to \$1500	2012 <sup>99</sup>	38.35%
Indiana	\$.05 to \$750	2013 <sup>100</sup>	22.91%
North Dakota	\$500 to \$1000	2013 <sup>101</sup>	11.58%
Alaska	\$50 to \$1000	2014 & 2016 <sup>102</sup>	9.11%
Nebraska	\$500 to \$1500	2015 <sup>103</sup>	45.26%
Texas	\$1500 to \$2500	2015 <sup>104</sup>	36.87%
Hawaii	\$300 to \$750	2016 <sup>105</sup>	
Tennessee	\$500 to \$1000	2016 <sup>106</sup>	
Virginia	\$200 to \$500	2018 <sup>107</sup>	

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99. H.R. 7176a, 2011-2012 Leg., Reg. Sess. (R.I. 2012).

100. H.R. 1006, 118th Gen. Assemb., Reg. Sess. (Ind. 2013).

101. S.R. 2251, 63rd Leg., Reg. Sess. (N.D. 2013).

102. S.R. 91, 29th Leg., Reg. Sess. (Alaska 2016); S.R. 64, 28th Leg., Reg. Sess. (Alaska 2014).

103. L.R. 605, 104th Leg., Reg. Sess. (Neb. 2015).

104. H.R. 1396, 84th Leg., Reg. Sess. (Tex. 2015).

105. S.R. 2964, 28th Leg., Reg. Sess. (Haw. 2016).

106. H.R. 2576, 109th Gen. Assemb., Reg. Sess. (Tenn. 2016).

107. S.R. 105, 2018-2019 Gen. Assemb., Reg. Sess. (Va. 2018).

## APPENDIX C: THEFT CRIME RATES IN STATES WITHOUT REFORM

State	Felony Threshold	Decrease in Theft Crime Rate Since 2001 <sup>108</sup>
Florida	\$300 <sup>109</sup>	36.90%
Idaho	\$1,000 <sup>110</sup>	41.86%
Iowa	\$1,000 <sup>111</sup>	35.93%
Maine	\$1,000 <sup>112</sup>	32.78%
Massachusetts	\$250 <sup>113</sup>	30.43%
Michigan	\$1,000 <sup>114</sup>	42.27%
New Jersey	\$200 <sup>115</sup>	38.08%
New York	\$1,000 <sup>116</sup>	26.34%
North Carolina	\$1,000 <sup>117</sup>	35.10%
Pennsylvania	\$2,000 <sup>118</sup>	24.93%
West Virginia	\$1,000 <sup>119</sup>	10.66%
Wisconsin	\$2,500 <sup>120</sup>	38.56%

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108. All theft crime rate data is from the 2001 and 2016 Crime in the United States tables published by the Federal Bureau of Investigation. See *Crime in the United States by State, 2016*, FED. BUREAU OF INVESTIGATION (September 2017), <https://ucr.fbi.gov/crime-in-the-u.s/2016/crime-in-the-u.s.-2016/topic-pages/tables/table-3>; *Index of Crime by State, 2001*, FED. BUREAU OF INVESTIGATION (2002), available at <https://ucr.fbi.gov/crime-in-the-u.s/2001>.

109. FLA. STAT. § 812.014(1)(c) (2016).

110. IDAHO CODE § 18-2407(1)(b) (2017).

111. IOWA CODE ANN. § 714.2(2) (West 2017).

112. ME. REV. STAT. ANN. 17-A § 353(1)(b)(4) (2008).

113. MASS. ANN. LAWS ch. 266, § 30 (LexisNexis 2017).

114. MICH. COMP. LAWS ANN. § 750.356(3)(a) (West 2017).

115. N.J. STAT. ANN. § 2C:20-2(b)(3) (West 2013).

116. N.Y. PENAL § 155.30 (Consol. 2017).

117. N.C. GEN. STAT. § 14-72(a) (2012).

118. 18 PA. CONS. STAT. § 3903 (2014).

119. W. VA. CODE § 61-3-13(a) (2017).

120. WIS. STAT. § 943.20 (2012).