

LIBRARY CRIME

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ABSTRACT

Libraries are often idealized as one of the few remaining safe, public spaces. Beyond providing books and internet access, they are a source of shelter, warmth, restrooms, and a place to stay without a reason for society's most vulnerable. But libraries are also at the core of a network of criminal laws that punish a wide array of library-related conduct. Steal a book? Write in or otherwise damage materials? Fail to return an item? Hide a book in a manner that looks like you are about to steal it? Many states criminalize these activities, often punishing them with potential jail time or even lengthy prison sentences if the materials at issue are valuable enough.

This Article is the first to survey and analyze library crime—criminal laws pertaining to libraries and library materials. Dozens of states criminalize the theft, destruction, failure to return, or mere concealment of library materials, sometimes punishing this conduct with mandatory jail sentences and potential prison sentences. Many states also prohibit certain people, such as certain sex offenders, from entering libraries. Still others have criminal regimes punishing librarians themselves for an array of privacy and discrimination offenses.

Beyond this Article's descriptive contribution, I argue that many library crimes are fundamentally inconsistent with the role of libraries. As places of shelter and refuge for those who are most at risk, state library crime regimes undermine the goals of libraries and are one of many facets of the U.S. system of mass incarceration. I also analyze the constitutional implications of library crimes, including recent measures seeking to ban books and potentially punish librarians for distributing or displaying disapproved materials.

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I. INTRODUCTION

Discussions about libraries tend to idealize them. Libraries are one of the few places people can go for free without an appointment. One need not enter a library with a plan, as they are places for exploration, discovery, and distraction. Libraries contain surprises—providing music, pictures, menus, and other items that may not fit with stereotypical expectations of dusty bookshelves.¹ Libraries invoke an almost romantic appeal by conjuring up notions of peace, quiet, and more books than one could ever hope to read. And as we learn about anecdotes of people meeting while working or studying in the library, libraries can be the source of literal romance as well.²

Libraries are more than a place to find books, read, and study. They serve as crucial spaces for unhoused individuals, offering shelter, bathrooms, and heat or air conditioning depending on the season.³ Many libraries coordinate with social workers to provide much-needed advice and assistance to those facing mental health issues, food insecurity, and legal troubles.⁴ Those with criminal records may find resources and opportunities to turn their lives around.⁵ Increasingly, libraries serve as gathering places for the community as a whole, serving as spaces for

1. See SUSAN ORLEAN, *THE LIBRARY BOOK* 265–68 (Simon & Schuster 2018) (discussing the “surprising things” one can find in the Los Angeles Public Library).

2. Aaron Welborn, *Love in the Library: True Tales of Romance by the Book*, DUKE UNIV. LIBRS. MAG. (Fall 2013), <https://blogs.library.duke.edu/magazine/2014/01/14/love-in-the-library-true-tales-of-romance-by-the-book/> [<https://perma.cc/KK63-W76R>].

3. See MacKenzie Ryan, *Why US Libraries Are on the Frontlines of the Homelessness Crisis*, THE GUARDIAN (Jan. 24, 2023, 6:00 AM), <https://www.theguardian.com/us-news/2023/jan/24/us-libraries-homeless-crisis-social-workers> [<https://perma.cc/GRJ9-QRYP>].

4. See Darian Benson, *Why Your Local Library Might Be Hiring a Social Worker*, NPR (Jan. 3, 2022, 5:00 AM), <https://www.npr.org/sections/health-Shots/2022/01/03/1063985757/why-your-local-library-might-be-hiring-a-social-worker> [<https://perma.cc/QN46-BQ66>];

Community Resources, BOISE PUB. LIBR., <https://www.boisepubliclibrary.org/programs-services/community-resources/> [<https://perma.cc/4WV3-TSNN>] (discussing services offered by a mental health coordinator, legal volunteers, and homeless outreach organizations); see also *infra* Part V.A.

5. See Lindsey Simon, *For Formerly Incarcerated People, Libraries Are a Lifeline*, ILOVELIBRARIES (Oct. 26, 2020), <https://ilovelibraries.org/article/formerly-incarcerated-people-libraries-are-lifeline/> [<https://perma.cc/7B2A-MVPY>].

events, meetings, and group collaborations.⁶ “Having fun isn’t hard when you’ve got a library card.”⁷ Indeed.

And yet, alongside these idyllic and beneficial visions of libraries, there exists a parallel system of criminal laws.⁸ These library crimes are structured around the services provided by libraries and penalize violations of library norms and expectations with sometimes significant criminal sanctions.⁹ Fail to return a book? That’s a crime in 21 jurisdictions.¹⁰ Stolen a book? You’ve broken the law in 24 jurisdictions.¹¹ Written in, damaged, or destroyed a book? You now have a criminal record in 24 jurisdictions—and potentially a felony record in Massachusetts, New York, and Oklahoma.¹²

In this Article, I delve into this unexplored field of library crime. I survey library crimes across the country and develop a taxonomy of crimes.¹³ Doing so sheds light on a wide range of prohibited behaviors.¹⁴ It also reveals extreme variation in treatment of library crimes.¹⁵ Some states address misconduct like library theft and destruction of materials through misdemeanor laws or civil violations.¹⁶ But others penalize the same conduct as felonies, some of which sometimes carry the possibility of many years in prison.¹⁷

6. Rosalind Bentley, *The Public Library as Community Center: Books, Latte, Yoga*, THE CHRISTIAN SCI. MONITOR (May 2, 2012), <https://www.csmonitor.com/The-Culture/Family/2012/0502/The-public-library-as-community-center-books-latte-yoga> [<https://perma.cc/9M7Z-R8JT>]; see also Charlie Nash, *Antony Blinken Confronted by Reporter at Kissinger’s 100th Birthday Party: ‘What is There to Celebrate About Henry Kissinger?’*, MEDIAITE (June 6, 2023, 7:10 AM), <https://www.mediaite.com/politics/antony-blinken-confronted-by-reporter-at-kissingers-100th-birthday-party-what-is-there-to-celebrate-about-henry-kissinger/> [<https://perma.cc/7JJX-M8SA>] (reporting on Henry Kissinger’s birthday celebration at the New York Public Library).

7. *Arthur: Arthur’s Almost Live Not Real Music Festival* (PBS television broadcast Dec. 28, 1998).

8. See *infra* Part II.

9. See *infra* Part II.

10. See *infra* Part II.C.

11. See *infra* Part II.A.1.

12. See *infra* Part II.B.1; MASS. GEN. LAWS ch. 266, § 100 (2023); N.Y. EDUC. LAW § 264 (McKinney 2023); OKLA. STAT. tit. 21, § 1785 (2023).

13. See *infra* Part II.

14. See *infra* Part II.

15. See *infra* Part II.

16. See *infra* Part II.

17. See *infra* Part IV.

I then turn to library crimes with a critical eye—arguing that many may be reduced or eliminated and emphasizing the conflict between idealized notions of libraries and the harsh system of punishment embodied by library crimes.¹⁸ I also address recent trends in banning books, how these bans interact with library crimes, and potential constitutional objections to these and other criminal laws.¹⁹

Part II surveys and organizes library crimes across the country.²⁰ Focusing on state laws, I group library crimes into several categories, including library theft, destruction of library property, failure to return materials, laws excluding patrons and employees, nuisance crimes, and librarian crimes.²¹ I also address laws that, while not crimes in themselves, are relevant to library criminal law, including: laws creating defenses and immunities for librarians from certain crimes; laws directing the proceeds of fines and fees in criminal proceedings to fund public libraries; and the delegation of punishing misconduct in and around libraries to municipalities.²² In crafting these categories, I bring together disparate crimes in an effort to highlight patterns across jurisdictions and to better unify this large number of distinct laws.²³

In Part III, I turn to constitutional considerations, starting with an overview of the limited and often uncertain constitutional law of libraries and their use.²⁴ I conclude that while many library crimes are likely to overcome constitutional scrutiny, broader laws that exclude certain classes of people from libraries may be more vulnerable to challenges.²⁵ In particular, exclusion of people required to register as sex offenders may run into constitutional obstacles if they are overly broad.²⁶ I also address the recent phenomenon of book bans and removals, how library crime plays a role in this trend, and the prospects for constitutional challenges to these bans.²⁷ There, overly broad state obscenity laws and uneven enforcement of book bans may give rise to claims of viewpoint discrimination, which may well lead to successful constitutional challenges—or, at the very least,

18. *See infra* Part IV.

19. *See infra* Part II.

20. *See infra* Part II.

21. *See infra* Part II.

22. *See infra* Part II.

23. *See infra* Part II.

24. *See infra* Part III.

25. *See infra* Part III.

26. *See infra* Part III.

27. *See infra* Part III.

burdensome constitutional litigation—that may deter states and municipalities from overly broad book bans.²⁸

Part IV analyzes library crime’s relationship with issues of mass incarceration and overcriminalization.²⁹ While admittedly a niche area of law and likely a small contributor to broader patterns of mass incarceration, library crime exemplifies tendencies to hastily resort to criminalization and imposing overly strict punishments.³⁰ I identify alternatives to library crimes, such as civil penalties and clear library policies, which may address much of the harm to which library crimes respond, without the severe penalties of jail, prison, and collateral consequences.³¹

Part V takes a deeper dive into the role of libraries in communities.³² Courts discussing libraries tend to portray libraries as providing a space for people to locate information and books, read, study, and engage in contemplation.³³ While this is certainly a part of the role libraries play, the reality is that libraries play a far more profound role for the least advantaged members of society. I discuss libraries’ role in providing shelter, access to technology, and a means of locating necessary social services, and how library crimes are contrary to this broader mission of libraries.³⁴ This adds urgency to the need to reform the law of library crime so that it may be brought in line with libraries’ broader purposes.³⁵

II. LIBRARY CRIMES: A SURVEY AND TAXONOMY

This Part surveys and categorizes library crimes in most states and the District of Columbia, as well as Guam and Puerto Rico. I group each set of crimes by a broad subject matter and note the potential for overlap where applicable. For example, Subpart A surveys crimes relating to the theft or unauthorized removal of library books or materials.³⁶ While this category includes crimes relating to the straightforward theft of materials, it also includes related crimes such as the willful

28. *See infra* Part III.

29. *See infra* Part IV.

30. *See infra* Part IV.

31. *See infra* Part IV.

32. *See infra* Part V.

33. *See infra* Part V.

34. *See infra* Part V.

35. *See infra* Part V.

36. *See infra* Part II.A.

concealment of materials as a crime in itself,³⁷ as well as possession of library theft instruments or receiving stolen books.³⁸ While these other crimes are distinct from theft, they are related to the general crime of theft or unauthorized removal and are therefore included under the umbrella category of library theft.

Relatedly, some crimes that I divide into distinct categories may be related to similar policy concerns. Subpart D discusses crimes related to the exclusion of certain people from libraries, such as restricting certain sex offenders from using libraries or being employed by libraries.³⁹ Subpart E addresses what I have categorized as “nuisance crimes,” which include disturbing the peace, spitting, and smoking.⁴⁰ There is a fair argument to be made that these nuisance crimes can be included in the section addressing crimes excluding certain people from libraries, as libraries may not want “problem patrons” on their premises who may disrupt the library environment.⁴¹ I have nevertheless chosen to distinguish the two categories of crime, largely to avoid the oversimplification of numerous crimes contained under a particular umbrella term.⁴²

In addition to criminal offenses, I also survey laws that have noteworthy bearing on criminal laws and libraries. Subpart H, for example, addresses laws that require the allocation of money received through criminal fines and fees to fund libraries.⁴³ While the crimes at issue often are not related to libraries, the interrelationship of library funding and criminal penalties is worth exploring.

While I have endeavored to be as inclusive as possible, this Part will only discuss state-level criminal restrictions.⁴⁴ As Subpart G discusses, several states delegate authority to localities to craft their own penalties and prohibitions relating

37. *See, e.g.*, GA. CODE ANN. § 20-5-54 (2023) (criminalizing the willful concealment of “a book or other public library property, while still on the premises of such public library” in addition to the willful or unauthorized removal of books or property from libraries).

38. *See, e.g.*, 18 PA. CONS. STAT. § 3929.2 (2023) (prohibiting the possession or distribution of library theft detection “shielding” devices); CAL. PENAL CODE § 496b (West 2023) (prohibiting book dealers from receiving books or other materials bearing library markings without making a diligent inquiry into whether the seller has a right to possess the materials).

39. *See infra* Part II.D.

40. *See infra* Part II.E.

41. *See* Kelly D. Blessinger, *Problem Patrons: All Shapes and Sizes*, REFERENCE LIBR., Oct. 2008, at 3, 4–10 (discussing “problem patrons” who harass staff, destroy property, and disrupt libraries, and tactics for defusing and dealing with these patrons).

42. *See infra* Parts II.D, II.E.

43. *See infra* Part II.H.

44. *See infra* Part II.E.

to public libraries.⁴⁵ Unfortunately, there simply are too many localities to include them in a systematic survey of library crime. Still, some of these crimes are included—particularly state statutes that are restricted in scope to particular localities, as well as local court rules that often pertain to law libraries.⁴⁶ Additionally, Subpart J attempts to make up for this to an extent by identifying explicit authority delegations.⁴⁷ Further, targeted work on local library crimes and their impact on specified communities is a worthy subject of future research.

A. Library Theft

1. Theft and Unauthorized Removal of Materials

Twenty-four states and Puerto Rico have laws prohibiting the theft or unauthorized removal of books or other materials from public libraries, state libraries, law libraries, or archives.⁴⁸ These states include Arizona, Arkansas, California, Connecticut, Georgia, Illinois, Iowa, Kansas, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Mexico, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Utah, Vermont, Virginia, Wisconsin, and Wyoming.⁴⁹ Many of these laws are specific to libraries. Arkansas provides a straightforward example of a library theft prohibition: “It shall be unlawful for any person to remove library materials without authorization from the premises wherein such materials are maintained or to retain possession of library materials without authorization.”⁵⁰

45. See *infra* Part II.G.

46. See *infra* Part II.G.

47. See *infra* Part II.J.

48. PINAL COUNTY, ARIZ. SUPER. CT. LOCAL R. 1.6 (2023) (specific to the Pinal County Superior Court law library); ARK. CODE ANN. § 13-2-803(a)(1) (2023); CAL. PENAL CODE § 490.5(a) (West 2023); CONN. GEN. STAT. § 53a-119(12) (2023); GA. CODE ANN. § 20-5-52 (2023); 720 ILL. COMP. STAT. 5/16-3 (2023); IOWA CODE §§ 714.1, .5 (2023); KAN. STAT. ANN. §§ 21-5801, -5804(b) (2023); MD. CODE ANN., EDUC. § 23-408 (West 2023); MASS. GEN. LAWS ch. 266, § 99A (2023); MICH. COMP. LAWS § 750.364 (2023); MINN. STAT. § 609.541 (2023); MO. REV. STAT. § 570.210(1)(1)–(2) (2023); NEB. REV. STAT. §§ 51-101, -109 (2023) (specific to the State Library); N.M. STAT. ANN. § 34-2-14 (2023) (specific to the New Mexico Supreme Court Law Library); OKLA. STAT. tit. 21, § 1739(B)(1) (2023); 18 PA. CONS. STAT. § 3929.1(a) (2023); P.R. LAWS ANN. tit. 2, § 437 (2011) (specific to the Puerto Rico Legislative Library); 11 R.I. GEN. LAWS § 11-41-14.1(a) (2023); S.C. CODE ANN. §§ 16-13-331, -330 (2023); UTAH CODE ANN. § 9-7-311, 76-6-801 (West 2023) (§ 9-7-311 is specific to the State Law Library); VT. STAT. ANN. tit. 13, § 3732 (2023); VA. CODE ANN. § 42.1-73 (2023); WIS. STAT. § 943.61(2) (2023); WYO. STAT. ANN. § 9-2-419 (2023) (specific to the State Archives).

49. See statutes cited *supra* note 48.

50. ARK. CODE ANN. § 13-2-803(a)(1) (2023).

Other states include library theft within their broader theft prohibitions. California, for example, addresses the punishment of petty theft of merchandise and library materials in a single statute.⁵¹ Illinois criminalizes library theft by including it in a statute prohibiting the “theft of labor or services or use of property,” defining library material as “available for hire” so that it falls within the scope of the theft statute.⁵² Iowa takes a similar approach, setting forth specific statutes stating that the concealment of library materials or the failure to return library materials under certain conditions is evidence of an intent to deprive a third party of property—thereby linking the concealment or retention of library materials to Iowa’s theft statute.⁵³ Beyond laws at the state level, local criminal and civil rules for the United States District Court for the Eastern District of North Carolina prohibit the removal of books from the district court law library without authorization.⁵⁴ Violation of these rules is punishable as contempt of court.⁵⁵

The crime of library theft is often punishable as a misdemeanor.⁵⁶ Some states’ laws against library theft provide for misdemeanor penalties without a reference to the value of the stolen items.⁵⁷ If the stolen materials are valuable enough, however, penalties for library theft can be severe.⁵⁸

Arkansas’ library theft law classifies the theft of books valued at more than \$500 and less than \$2,500 as a Class C felony (punishable by 3 to 10 years in prison), and the theft of books valued over \$2,500 as a Class B felony (punishable by 5 to 20 years in prison).⁵⁹ Connecticut library theft penalties can range as high as a Class B felony, punishable by up to 20 years in prison—although getting to this level requires theft of materials valued above \$20,000, theft via extortion, or theft of materials valued at more than \$2,000 obtained by “defrauding a public

51. See CAL. PENAL CODE § 490.5(a) (West 2023).

52. See 720 ILL. COMP. STAT. 5/16-3(a) (2023).

53. See IOWA CODE §§ 714.1, .5 (2023).

54. E.D.N.C. CRIM. R. 100.1; E.D.N.C. CIV. R. 100.1.

55. E.D.N.C. CRIM. R. 100.1; E.D.N.C. CIV. R. 100.1.

56. See, e.g., GA. CODE ANN. § 20-5-52 (2023); MINN. STAT. § 609.541(2) (2023).

57. See, e.g., GA. CODE ANN. § 20-5-52 (2023) (theft of library materials punishable as misdemeanor); MD. CODE ANN., EDUC. § 23-408(b) (West 2023) (punishable by imprisonment of up to three months and a fine of up to \$250); MICH. COMP. LAWS § 750.364 (2023) (library theft punishable as misdemeanor); MINN. STAT. § 609.541 (2023) (library theft punishable as misdemeanor).

58. See, e.g., ARK. CODE ANN. §§ 5-4-401(a)(3)–(4), 13-2-803(b) (2023); CONN. GEN. STAT. § 53a-119(12) (2023).

59. ARK. CODE ANN. §§ 5-4-401(a)(3)–(4), 13-2-803(b) (2023).

community.”⁶⁰ Wisconsin’s penalties for library theft rely on a \$2,500 threshold for the value of stolen materials; if the value is below that threshold, one may be punished with up to nine months in jail, a fine of up to \$10,000, or both, but if the value of the stolen materials is more than \$2,500, one may be punished by up to six years in prison.⁶¹ Virginia law leaves a great deal of discretion to the sentencing court, punishing theft of library materials valued over \$1,000 with a jail sentence of up to one year, or a prison sentence of up to twenty years at the “discretion of the jury or court trying the case without a jury.”⁶² Rhode Island’s library theft law is tied to penalty provisions for larceny and punishes the stealing of materials with penalties as high as 10 years in prison (if stolen materials are valued at \$10,000 or higher), with lesser penalties of up to six years in prison (value between \$5,000 and \$10,000), three years in prison (value between \$1,500 and \$5,000), or one year in jail (value less than \$1,500).⁶³ Missouri’s approach is similar, as its library theft crime is tied to its general theft statute, which imposes penalties of imprisonment of up to seven years if the materials stolen are worth more than \$750, and up to 10 years if the materials stolen are worth more than \$25,000.⁶⁴

Some states’ penalties become notably severe at relatively low value thresholds.⁶⁵ Theft of library materials valued at more than \$300 is a Class Three felony under Illinois law and punishable by a minimum of two years and a maximum of five years in prison.⁶⁶ Massachusetts law is similarly strict; punishing the theft of library materials valued above \$250 with up to five years in prison, a fine of up to \$25,000, or both.⁶⁷

Pennsylvania’s sentencing scheme for library theft is primarily tied to the number of prior offenses and may well result in severe penalties for those with

60. See CONN. GEN. STAT. §§ 53a-35a(6), -119, -122 (2023). The penalties decrease based on certain thresholds for the value of stolen material, with value greater than \$10,000 but less than \$20,000 punishable by up to 10 years in prison, value between \$2,000 and \$10,000 punishable by up to five years in prison, value between \$1,000 and \$2,000 punishable by up to one year in jail, value of between \$500 and \$1,000 punishable by up to six months in jail, and value of \$500 or less punishable by up to three months in jail. See *id.* §§ 53a-35a(7)-(8), -36, -119, -122.

61. WIS. STAT. §§ 939.50(3)(h), .51(3)(a), 943.61(5) (2023).

62. VA. CODE ANN. §§ 18.2-95, 42.1-73 (2023).

63. 11 R.I. GEN. LAWS §§ 11-14.1(a), -41-5(a)(1)-(3) (2023).

64. MO. REV. STAT. §§ 558.011(1)(3)-(4), 570.030(4)-(5), .210 (2023).

65. See, e.g., 720 ILL. COMP. STAT. 5/16-3(d) (2023); 730 ILL. COMP. STAT. 5/5-4.5-40(a) (2017); MASS. GEN. LAWS ch. 266, § 99A (2023).

66. See 720 ILL. COMP. STAT. 5/16-3(d) (2023); 730 ILL. COMP. STAT. 5/5-4.5-40(a) (2023).

67. MASS. GEN. LAWS ch. 266, § 99A (2023).

prior convictions.⁶⁸ A first-time conviction for theft of material valued below \$150 is a “summary offense,” punishable by up to 90 days in jail.⁶⁹ A second offense of stealing material valued below \$150 is a second degree misdemeanor, punishable by up to two years in prison.⁷⁰ If the value of the stolen material is above \$150—whether it is a first or second offense—the penalty is up to five years in prison.⁷¹ And regardless of the value of stolen material, a third or subsequent offense is punishable by up to seven years in prison.⁷²

Other states are not so punitive.⁷³ Oklahoma, for example, punishes library theft by imposition of fines ranging from to \$1,000 to \$10,000 depending on whether the amount stolen passes a \$500 value threshold.⁷⁴ Alternatively, the offender may be required to “make restitution to the library facility, including payment of all related expenses incurred by the library facility as a result of the actions of the offender.”⁷⁵ Vermont is even more lenient, punishing theft of library materials with a fine of up to \$50.⁷⁶

Finally, while Georgia has a general library theft statute,⁷⁷ it has another statute that prohibits the theft, alteration, defacing, or falsification of “any minutes, document, book, or any proceeding whatever of or belonging to any public office” within the state of Georgia.⁷⁸ While this may initially appear to apply to government and administrative records, the statute goes on to define “public office” broadly to include “any office held, used, or controlled for public purposes by any department, agency, board, or branch of state, county, or municipal government without reference to the ownership of the building or of the realty on which it is situated.”⁷⁹ The definition includes libraries maintained by these state, county, or municipal governments.⁸⁰ Violations of the law are severe, punishable by a minimum of 2 years and a maximum of 10 years in prison.⁸¹ While this law,

68. 18 PA. CONS. STAT. § 3929.1(b)(1)(ii) (2023); 101 PA. CODE § 15.66(a) (2023).

69. 18 PA. CONS. STAT. § 3929.1(b)(1)(ii) (2023); 101 PA. CODE § 15.66(a)(8) (2023).

70. 18 PA. CONS. STAT. § 3929.1(b)(1)(ii) (2023); 101 PA. CODE § 15.66(a)(6) (2023).

71. 18 PA. CONS. STAT. § 3929.1(b)(1)(ii) (2023); 101 PA. CODE § 15.66(a)(5) (2023).

72. 18 PA. CONS. STAT. § 3929.1(b)(1)(ii) (2023); 101 PA. CODE § 15.66(a)(4) (2023).

73. *See* OKLA. STAT. tit. 21, § 1739(C) (2023); VT. STAT. ANN. tit. 13, § 3732 (2023).

74. *See* OKLA. STAT. tit. 21, § 1739(C) (2023).

75. *Id.*

76. VT. STAT. ANN. tit. 13, § 3732 (2023).

77. GA. CODE ANN. § 20-5-52 (2023).

78. GA. CODE ANN. § 45-11-1(a) (2023).

79. GA. CODE ANN. § 45-11-1(f)(2) (2023).

80. GA. CODE ANN. § 45-11-1(f)(2) (2023).

81. GA. CODE ANN. § 45-11-1(a) (2023).

especially when read in context of Georgia's misdemeanor-only library theft statute,⁸² seems to apply only to internal records of government departments, the plain meaning of its text and definitional language appears to make any theft or alteration of library books a felony.⁸³

2. Willful Concealment of Library Materials

While many states prohibit theft of library materials, a smaller subset criminalize the concealment of materials as a separate offense.⁸⁴ These states include Georgia, New Jersey, Pennsylvania, Rhode Island, South Carolina, Utah, Virginia, and Wisconsin.⁸⁵

Criminalizing concealment alone makes prosecution of theft offenses easier—especially when combined with statutory presumptions that concealment of items is *prima facie* evidence of an intent to permanently deprive the library of materials.⁸⁶ Rather than requiring library personnel to wait until a person leaves the premises with the materials, the mere concealment of goods is enough to violate these statutes.⁸⁷ Georgia's law is an example of such a statute, providing that:

Any person who, without authority and with the intention of depriving the public library of the ownership of such property, willfully conceals a book or other public library property, while still on the premises of such public library . . . shall be guilty of a misdemeanor . . . Proof of the willful concealment of any book or other public library property while still on the premises of such public library shall be *prima-facie* evidence of intent to violate this Code section.⁸⁸

Other states with a similar crime-presumption setup include New Jersey, South Carolina, and Virginia.⁸⁹ Penalties for many willful concealment violations

82. GA. CODE ANN. § 20-5-52 (2023).

83. See GA. CODE ANN. §§ 20-5-52, 45-11-1(a) (2023).

84. GA. CODE ANN. § 20-5-54 (2023); N.J. STAT. ANN. § 2C:20-13 (West 2023); 18 PA. CONS. STAT. § 3929.1(a) (2023); 11 R.I. GEN. LAWS § 11-41-14.1(a) (2023); S.C. CODE ANN. § 16-13-331 (2023); UTAH CODE ANN. § 76-6-801(4)(a) (West 2023); VA. CODE ANN. § 42.1-73 (2023); WIS. STAT. § 943.61(2) (2023).

85. See statutes cited *supra* note 84.

86. See Wilbur J. Markstrom, Comment, *Legislation Survey and Analysis of Criminal and Tort Aspects of Shoplifting Statutes*, 58 MICH. L. REV. 429, 435 (1960).

87. See *id.*

88. GA. CODE ANN. § 20-5-54 (2023).

89. See N.J. STAT. ANN. § 2C:20-13 (West 2023); S.C. CODE ANN. § 16-13-331 (2023); VA. CODE ANN. § 42.1-73 (2023).

are tied to related theft violations.⁹⁰ This is not the case for New Jersey, though, which has a willful concealment library crime but no accompanying crime of library theft.⁹¹ While New Jersey's legislature passed a law prohibiting library theft, New Jersey's governor vetoed the law, arguing that New Jersey's general theft law covered the theft of library materials, adding a library theft crime would result in needless complications to the law of theft, and the library theft bill would decrease the maximum potential penalty for those guilty of library theft.⁹²

In other states the concealment of library materials may not be a standalone crime, but statutes may make such concealment relevant to the prosecution of other crimes like theft.⁹³ Iowa law, for example, provides that a person's concealment of "library materials or equipment . . . upon [their] person or among the belongings of another is . . . material evidence of intent to deprive [the library of its property]."⁹⁴ While Wisconsin penalizes the intentional concealment of library materials as a standalone crime, its concealment statute contains a similar provision as Iowa's, stating that "concealment of library material[s] beyond the last station for borrowing library material in a library is evidence of intent to deprive the library of possession of the material."⁹⁵

3. Receiving Stolen Library Materials

While many states criminalize theft of library materials, comparatively few specifically punish the receipt of stolen library materials.⁹⁶ California and South Carolina appear to be the few examples of states that do so.⁹⁷ South Carolina's library theft law includes a provision that also prohibits the sale, purchase, or receipt of books, documents, newspapers, pictures, or other materials that the recipient knows were stolen from a library, museum, or other government collection.⁹⁸

90. *See, e.g.*, GA. CODE ANN. § 20-5-54 (2023); 18 PA. CONS. STAT. § 3929.1(a) (2023).

91. *See* N.J. STAT. ANN. § 2C:20-13 (West 2023).

92. *See id.*; S. 722, 201 Leg., 2d Ann. Sess. (N.J. 1985) (as vetoed by the Governor, Aug. 28, 1985), <https://repo.njstatelib.org/bitstream/handle/10929.1/23168/L1985c373.pdf?sequence=1&isAllowed=y>.

93. *See, e.g.*, IOWA CODE § 714.5(1) (2023).

94. IOWA CODE § 714.5(1) (2023).

95. WIS. STAT. § 943.61(3) (2023).

96. *See, e.g.*, IOWA CODE §§ 714.1, .5 (2023). *But see* CAL. PENAL CODE § 496b (West 2023); S.C. CODE ANN. § 16-13-330 (2023).

97. *See* CAL. PENAL CODE § 496b (West 2023); S.C. CODE ANN. § 16-13-330 (2023).

98. *See* S.C. CODE ANN. § 16-13-330 (2023).

California's receipt of stolen library materials is specific to those who deal in or collect "second-hand books or other literary material," as well as those people's agents, employees, or representatives.⁹⁹ Under California law, if these actors receive or purchase materials "belonging to, and bearing any mark or indicia of ownership by a public or incorporated library, college or university, without ascertaining by diligent inquiry that the person selling or delivering the same has a legal right to do so," they may be punished by up to one year in jail.¹⁰⁰

A likely explanation for states' lack of laws concerning receiving stolen library materials is that other state laws may already cover the receipt of stolen goods—whether they are stolen under general theft or larceny statutes, or under library theft statutes.¹⁰¹ I will not canvas receipt of stolen goods statutes in depth here, but this is not to say they are not worth considering. Take Rhode Island, for example. Rhode Island has a library theft law that punishes theft of library materials as misdemeanors or increasingly severe penalties depending on the value of the stolen goods.¹⁰² But when it comes to prohibitions on receiving stolen goods, Rhode Island's law calls for notably severe penalties for receiving stolen goods from a minor.¹⁰³ The knowing receipt of stolen property from a person under 18 years of age is punishable by up to 10 years in prison, regardless of the value of property stolen.¹⁰⁴ This means that if someone buys or obtains a stolen library book from a minor, that person may end up in prison for 10 years, regardless of the value of the stolen book.¹⁰⁵

4. *Breaking and Entering Libraries*

Keeping with the theme of Rhode Island's notoriously strict library crime penalties, Rhode Island law also criminalizes the breaking and entering of any library during the daytime.¹⁰⁶ Rhode Island law prohibits, but does not define, "burglary."¹⁰⁷ Under Rhode Island's common law, burglary is defined as "the breaking and entering the dwelling house of another *in the nighttime* with the intent

99. CAL. PENAL CODE § 496b (West 2023).

100. *Id.*

101. *See* S. 722, 201 Leg., 2d Ann. Sess. (N.J. 1985) (as vetoed by the Governor, Aug. 28, 1985), <https://repo.njstatelib.org/bitstream/handle/10929.1/23168/L1985c373.pdf?sequence=1&isAllowed=y>.

102. *See* 11 R.I. GEN. LAWS §§ 11-41-5(a)(1)-(3), -14.1 (2023).

103. *Id.* § 11-41-5(a)(3).

104. *Id.*

105. *Id.*

106. *See id.* §§ 11-8-4, -5.1.

107. *See id.* § 11-8-1.

to commit a felony therein, whether the felony be actually committed or not.”¹⁰⁸ Under the common law, the building entered must be a dwelling house or apartment.¹⁰⁹ For example, in *State v. O’Rourke*, the Rhode Island Supreme Court found that the state had not proven all elements of burglary when a defendant argued that he had broken into an apartment with the intent of entering an adjoining drugstore to steal money from the store.¹¹⁰ To meet all the elements of burglary, the defendant needed to intend to commit a crime within the dwelling house, not an adjoining commercial business.¹¹¹

During the day, however, Rhode Island has a host of other statutes that prohibit breaking and entering of non-residential properties.¹¹² Two of these statutes apply to libraries.¹¹³ Rhode Island generally prohibits breaking and entering libraries during the daytime, regardless of criminal intent, punishing such offenses with up to three years in prison.¹¹⁴ But if a person breaks and enters a library during the daytime “with [the] intent to commit murder, sexual assault, robbery or larceny,” that person may be punished by up to 10 years in prison.¹¹⁵ One can see how this law, combined with Rhode Island’s library theft law, could be used to severely punish those breaking into libraries.

5. Possession of Library Theft Instruments

In addition to its library theft crime, Pennsylvania goes further and prohibits the possession of devices that may be used to circumvent library theft detection systems.¹¹⁶ Pennsylvania defines these devices as:

Any tool, device, equipment or object designed to destroy, remove, render inoperative or deactivate any inventory control tag, security strip or any other mechanism designed or employed to prevent an offense under section 3929 (relating to retail theft) or 3929.1 (relating to library theft) which is possessed, manufactured, sold or offered for sale with the intention that it be used to: . . . convert library or museum material to one’s own use. [As well as:] Any laminated, lined or coated bag, purse, container, case, coat or similar device

108. *State v. Hudson*, 165 A. 649, 650 (R.I. 1933).

109. *See State v. O’Rourke*, 399 A.2d 1237, 1238–39 (R.I. 1979) (emphasis added).

110. *Id.* at 1238, 1240.

111. *Id.*

112. *See* 11 R.I. GEN. LAWS §§ 11-8-4, -5.1 (2023).

113. *See id.* §§ 11-8-4, -5.1.

114. *Id.* § 11-8-5.1.

115. *Id.* § 11-8-4.

116. *See* 18 PA. CONS. STAT. § 3929.2 (2023).

which is intended to be used to take possession of, carry away, transfer, cause to be carried away or transferred or conceal: . . . any library or museum material on his person or among his belongings with the intent to convert such material to his own use.¹¹⁷

Violation of this statute is a “misdemeanor of the first degree,” which, under Pennsylvania law, carries the high (for a misdemeanor) penalty of up to five years in prison.¹¹⁸

6. Librarian Detention Powers

A discussion of library theft is not complete without addressing state laws that delegate law enforcement powers to librarians in cases of library theft. States that grant librarians some measure of power to detain those suspected of library theft, or other library crimes, include California, Connecticut, New Jersey, Ohio, Rhode Island, Utah, and Wisconsin.¹¹⁹

Most of these grants of authority permit officials, employees, or agents of libraries to detain a person “in a reasonable manner for a reasonable length of time,” where those officials, employees, or agents suspect that the person has committed library theft or unlawful concealment.¹²⁰ Some states grant library employees more leeway. Connecticut law, for example, does not require a library employee to have probable cause to believe that a person has removed, is removing, or has mutilated library materials—only “reasonable grounds” are required to permit detention.¹²¹ Rhode Island also permits detention upon “reasonable grounds” suspicion, although it also requires library employees to identify themselves and state the reason for stopping the person suspected of theft or concealment.¹²² On these reasonable grounds, library employees may then detain people “for a time sufficient to summon a police officer to the library[,]” although that time may not exceed 30 minutes.¹²³

117. *Id.* § 3929.2(b).

118. *Id.* § 3929.2(a); 101 PA. CODE § 15.66(a)(5) (2023).

119. CAL. PENAL CODE § 490.5(f)(1) (West 2023); CONN. GEN. STAT. § 53a-119a(b) (2023); N.J. STAT. ANN. § 2C:20-14 (West 2023); OHIO REV. CODE ANN. § 2935.041(C) (West 2023); 11 R.I. GEN. LAWS § 11-41-14.1(e) (2023); UTAH CODE ANN. §§ 76-6-803.60, 77-7-12 (West 2023); WIS. STAT. § 943.61(4) (2023).

120. *See* WIS. STAT. § 943.61(4) (2023); *see also* CAL. PENAL CODE § 490.5(f)(1) (West 2023) (permitting detention in a reasonable manner for a reasonable time upon probable cause that a person has unlawfully taken library materials).

121. *See* CONN. GEN. STAT. § 53a-119a(b) (2023).

122. *See* 11 R.I. GEN. LAWS § 11-41-14.1(c) (2023).

123. *Id.*

California law permits a library employee to use a “reasonable amount of nondeadly force necessary to protect himself or herself and to prevent escape of the person detained or the loss of tangible or intangible property.”¹²⁴ New Jersey libraries are required to notify patrons that they may be subject to detention by posting a written notice that librarians have the power to detain people for a reasonable period of time if those people are suspected of stealing library materials.¹²⁵ States take different approaches to searches. Rhode Island permits “a limited and reasonable search” of a person if that person refuses to surrender an item a library employee suspects has been stolen.¹²⁶ Wisconsin prohibits searches of theft suspects by librarians.¹²⁷

Ohio grants library employees a fair amount of leeway in justifications for detaining people and what may be done during such detention.¹²⁸ Under Ohio law, officers, agents, or employees of libraries may detain people:

- (1) To recover the property that is the subject of the unlawful taking, criminal mischief, or theft;
- (2) To cause an arrest to be made by a peace officer;
- (3) To obtain a warrant of arrest;
- (4) To offer the person, if the person is suspected of the unlawful taking, criminal mischief, or theft and notwithstanding any other provision of the Revised Code, an opportunity to complete a pretrial diversion program and to inform the person of the other legal remedies available to the library, museum, archival institution, or merchant.¹²⁹

It is unclear whether librarians are properly trained or equipped to engage in these functions. While pretrial diversion may be preferable to a criminal conviction and sentencing, that option thrusts the role of police officer, prosecutor, and judge upon the librarian who would seek to undertake that option. And librarians in Ohio,

124. CAL. PENAL CODE § 490.5(f)(2) (West 2023).

125. N.J. STAT. ANN. § 2C:20-15 (West 2023).

126. 11 R.I. GEN. LAWS § 11-41-14.1(c) (2023).

127. WIS. STAT. § 943.61(4) (2023).

128. *See, e.g.*, OHIO REV. CODE ANN. § 2935.041(C) (West 2023).

129. *Id.*

and elsewhere, may be reluctant to carry out even lawful detentions in an increasingly armed society.¹³⁰

B. Destruction of Library Property

1. Destruction of Library Materials and Property

At least 24 states, the District of Columbia, and Puerto Rico have laws prohibiting the destruction, defacement, or mutilation of material or properties belonging to public libraries, law libraries, university libraries, state libraries, or state archives.¹³¹ Altogether, states and jurisdictions with such laws include Arkansas, California, the District of Columbia, Georgia, Idaho, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nevada, New Hampshire, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Utah, Vermont, Virginia, Washington, and Wyoming.¹³²

Some of these statutes apply only to library materials, rather than property owned by the library more broadly.¹³³ Arkansas's prohibition, for example, states that "[i]t shall be unlawful for any person to willfully mutilate library materials."¹³⁴ California's law fits this description as well—although it goes into more detail in

130. See Tom R. Arterburn, *Librarians: Caretakers or Crimefighters?*, AM. LIBRS., Aug. 1996, at 32, 34 (“[S]ome of today’s ‘tricksters’ have traded in their pea shooters for semi-automatic handguns or even pipe bombs. Consequently, in more and more libraries these days, anything harsher than a polite suggestion might be more appropriately handled by the guys with the body armor.”).

131. See ARK. CODE ANN. § 13-2-803(a)(2) (2023); CAL. EDUC. CODE § 19910 (West 2023); D.C. CODE § 22-3306 (2023) (applies to D.C. public libraries as well as the Library of Congress and other federal libraries in the District of Columbia); GA. CODE ANN. § 20-5-52 (2023); IDAHO CODE § 4-107 (2023) (specific to the Idaho Law Library); ME. STAT. tit. 1, § 452 (2023); MD. CODE ANN., EDUC. § 23-408(a) (West 2023); MASS GEN. LAWS ch. 266, § 100 (2023); MICH. COMP. LAWS § 750.391 (2023); MINN. STAT. § 609.541 (2023); MO. REV. STAT. § 570.210(1)(4) (2023); NEV. REV. STAT. § 379.160(2) (2023); N.H. REV. STAT. ANN. § 202-A:24 (2023); N.Y. EDUC. LAW § 264 (McKinney 2023); N.C. GEN. STAT. § 14-398 (2023); OHIO REV. CODE ANN. § 2909.05(B)(2) (West 2023); OKLA. STAT. tit. 21, §§ 1785, 1739(B)(2) (2023); 24 PA. CONS. STAT. § 9376(a) (2023); P.R. LAWS ANN. tit. 2, § 437 (2023) (specific to the Puerto Rico Legislative Library); 11 R.I. GEN. LAWS § 11-44-15(a) (2023); S.C. CODE ANN. § 16-13-330 (2023); UTAH CODE ANN. §§ 7-6-803(2), 9-7-214 (West 2023); VT. STAT. ANN. tit. 22, § 111(b) (2023); VA. CODE ANN. §§ 18.2-138, 42.1-72 (2023); WASH. REV. CODE § 27.12.330 (2023); WYO. STAT. ANN. § 9-2-419 (2023) (specific to Wyoming State Archives).

132. See statutes cited *supra* note 131.

133. See, e.g., ARK. CODE ANN. § 13-2-803(a)(2) (2023); CAL. EDUC. CODE § 19910 (West 2023); D.C. CODE § 22-3306 (2023).

134. ARK. CODE ANN. § 13-2-803(a)(2) (2023).

describing what types of materials are at issue and prohibits the cutting, tearing, defacing, breaking, or injury of any “book, map, chart, picture, engraving, statue, coin, model, apparatus, or other work of literature, art, mechanics, or object of curiosity, deposited in any public library, gallery, museum, collection, fair, or exhibition”¹³⁵ The District of Columbia’s law is similar, prohibiting the defacing, injury, mutilation, tearing, or destruction of “any book, pamphlet, or manuscript, or any portion thereof belonging to the Library of Congress, or to any public library in the District of Columbia,” as well as the injury, defacement, or destruction of any “book, pamphlet, document, manuscript, public record, print, engraving, medal, newspaper, or work of art, the property of the United States or of the District of Columbia.”¹³⁶

Other prohibitions are broader, applying not only to library materials, but to library property such as furniture and buildings.¹³⁷ Idaho law prevents the mutilation or destruction of books or articles of furniture in the state law library.¹³⁸ Other states use a broader, “property” catch-all to specify items other than library books or documents.¹³⁹

Many states prohibiting the destruction of library materials and property do so through specific statutes that create standalone violations for the misconduct.¹⁴⁰ But some states criminalize the destruction of library materials and properties by reference to more general vandalism statutes.¹⁴¹ Other states equate the destruction or defacement of library materials with theft, lumping the violations and penalties for such behavior with the library theft statutes discussed above.¹⁴²

135. CAL. EDUC. CODE § 19910 (West 2023).

136. D.C. CODE § 22-3306 (2023).

137. *See, e.g.*, IDAHO CODE § 4-107 (2023).

138. *Id.*

139. *See, e.g.*, MD. CODE ANN., EDUC. § 23-408 (West 2023) (prohibiting the mutilation or injury of “any book, map, picture, engraving, manuscript, or other property of any library”); MASS GEN. LAWS ch. 266, § 100 (2023) (prohibiting writing on, injuring, defacing, mutilating, or destroying “any library material or property”); MINN. STAT. § 609.541 (2023) (prohibiting the intentional damaging of any “books, maps, pictures, manuscripts, films, or other property of any public library or library belonging to the state or to any political subdivision”).

140. *See, e.g.*, ARK. CODE ANN. § 13-2-803(a)(2) (2023); CAL. EDUC. CODE § 19910 (West 2023); IDAHO CODE § 4-107 (2023); 24 PA. CONS. STAT. § 9376 (2023).

141. *See, e.g.*, OHIO REV. CODE ANN. § 2909.05(E) (West 2023) (“Whoever violates this section is guilty of vandalism.”).

142. *See, e.g.*, MO. REV. STAT. § 570.210(1) (2023) (stating anyone who removes materials without authorization, fails to return material, or “[k]nowingly writes on, injures, defaces, tears, cuts, mutilates, or destroys a book, document, or other library material” is “deemed to have

Penalties for destruction of library materials and property vary widely. Many library material destruction laws are misdemeanors, punishing people with fines, jail time of a year or less, or both.¹⁴³ Some states are even more lenient, punishing violators with fines alone.¹⁴⁴ Other states offer harsher penalties depending on the value of the materials damaged or destroyed. Arkansas, for example, employs the same value scheme it uses for punishing library theft, meaning that damaging books valued at more than \$500 and less than \$2,500 is a Class C felony (punishable by 3 to 10 years in prison), and the theft of books valued over \$2,500 is a Class B felony (punishable by 5 to 20 years in prison).¹⁴⁵ Damaging books with a value of \$500 or less is a Class A misdemeanor, punishable by up to one year in jail.¹⁴⁶ Ohio also imposes several thresholds, with destruction of library property over \$150,000 in value being punishable by up to three years in prison, destruction of property between \$7,500 and \$150,000 being punishable by up to 18 months in prison, and destruction of property of less than \$7,500 being punishable by up to one year in prison.¹⁴⁷ Punishment in Virginia depends on the value of what has been damaged including library books, materials, or the library itself, as damaging or destroying books is a misdemeanor punishable by up to one year in jail, yet breaking a library window is punishable by a minimum of one year in prison and a maximum of five years in prison.¹⁴⁸

Other states provide for notably harsh penalties regardless of the value of the books damaged or destroyed. Massachusetts law provides for imprisonment of up

appropriated said item with the intent to deprive the library of said item without its consent and shall be guilty of the offense of stealing under section 570.030”).

143. *See, e.g.*, CAL. EDUC. CODE § 19910 (West 2023); CAL. PENAL CODE § 19 (West 2023) (punishing destruction of library materials as a misdemeanor with no specified jail time or fine, thereby implicating California’s default misdemeanor punishment of up to six months in jail, a fine of up to \$1,000, or both); 24 PA. CONS. STAT. § 9376 (2023); 18 PA. CONS. STAT. § 6708 (2023); 101 PA. CONS. STAT. § 15.66(a)(8) (2023) (destruction of library materials is a summary offense, punishable by up to 90 days in jail); 11 R.I. GEN. LAWS § 11-44-15(a) (2023) (destruction of library materials or property is a misdemeanor which, under Rhode Island law, is punishable by up to one year in jail, a fine of up to \$100, or both); S.C. CODE ANN. § 16-13-330 (2023) (destruction of library materials is punishable by a fine of up to \$100 or imprisonment for up to thirty days).

144. *See, e.g.*, NEV. REV. STAT. § 379.160 (2023) (destruction of library materials “shall be punished by a fine of not more than \$500”); VT. STAT. ANN. tit. 22, § 111 (2023) (damaging or defacing library materials is punishable by a fine of up to \$500 for each item of library property); WYO. STAT. ANN. § 9-2-419 (2023) (defacing materials in the Wyoming state archives is a misdemeanor punishable by a fine of up to \$100).

145. ARK. CODE ANN. § § 5-4-401(a)(3)–(4), 13-2-803(b) (2023).

146. *See id.*

147. *See* OHIO REV. CODE ANN. §§ 2909.05, 2929.14(A)(3)–(5) (West 2023).

148. *See* VA. CODE ANN. §§ 18.2-10(f), -11(a), -138 (2023).

to two years for those who damage or destroy library books or property, regardless of the value of the destroyed materials.¹⁴⁹ Those who damage property belonging to libraries in New York may be punished by up to three years in prison or a jail sentence of up to one year—again, regardless of the value of the destroyed or damaged property.¹⁵⁰ Oklahoma’s punishment scheme is the same—up to three years in prison or one year in jail regardless of the value of the destroyed materials.¹⁵¹ While North Carolina’s library material destruction law contains a monetary value threshold, it is only set at \$50, meaning that many instances of library theft will likely be treated as Class H felonies punishable by 4 to 25 months in prison.¹⁵²

2. *Destruction of Library Records*

As discussed above, Massachusetts law criminalizes the destruction of library materials.¹⁵³ But Massachusetts law also includes a separate crime for the alteration or destruction of “library ownership records, electronic or catalog records retained apart from or applied directly to the library materials or property.”¹⁵⁴ Massachusetts law is already fairly harsh with regard to the damage or destruction of library books or property, punishing this behavior with up to two years in prison regardless of the value of property destroyed.¹⁵⁵ But Massachusetts treats the destruction of library records even more harshly, punishing such destruction with a minimum fine of \$1,000 and a maximum penalty of up to five years in prison, a maximum fine of \$25,000, or both.¹⁵⁶ Facing the choice between destroying a book and the card catalog entry for that book, one would likely be better off destroying the book.

3. *Arson and Terrorism*

As discussed above, this Article does not discuss general vandalism, arson, theft, or other crimes which may happen to involve libraries. But California law

149. See MASS. GEN. LAWS ch. 266, § 100 (2023).

150. N.Y. EDUC. LAW § 264 (McKinney 2023).

151. See OKLA. STAT. tit. 21, § 1785 (2023). Oklahoma has a separate crime of “library theft,” which includes the mutilation or destruction of library materials, but which is punishable as a misdemeanor. See *id.* § 1739(B)(2).

152. See N.C. GEN. STAT. §§ 14-398, 15A-1340.17(c)–(d) (2023).

153. See MASS. GEN. LAWS ch. 266, § 100 (2023).

154. *Id.* § 99A.

155. See *id.* § 100.

156. See *id.* § 99A.

explicitly addresses libraries in its laws relating to arson and terrorism.¹⁵⁷ California’s law prohibiting terrorism defines terrorism to include incidents where a person “explodes, ignites, or attempts to explode or ignite any destructive device or any explosive, or who commits arson . . . for the purpose of terrorizing another or in reckless disregard of terrorizing another[,]” in one of several places listed in the terrorism statute.¹⁵⁸ These places include “[a]ny bookstore or public or private library.”¹⁵⁹

California law permits the governor to offer rewards for information leading to the arrest and conviction of people for certain, specified crimes.¹⁶⁰ Terrorism is one of the specified crimes.¹⁶¹ But even if the burning or bombing of a bookstore or public or private library does not amount to terrorism, the governor may still offer an award—but only if that bookstore or library (or a public or private donor acting on its behalf) also offers a reward.¹⁶²

C. Failure to Return Library Materials

While library theft prohibits the unauthorized taking or theft of materials from a library, people take books and other items from libraries all the time without any problem.¹⁶³ In most circumstances, however, one may only withdraw a book from a library for a certain period of time. Once that time expires, one is in violation of library rules and may be required to pay an overdue fine to the library. I do not address these fines here—primarily because they often are not criminal fines or fees and are instead rules imposed by a library rather than a criminal law or ordinance passed by a state or local government.¹⁶⁴

But many states do punish failure to return books or materials with specified criminal statutes—often when one fails to return materials after receiving written

157. See CAL. PENAL CODE § 11413 (West 2023).

158. *Id.* § 11413(a).

159. *Id.* § 11413(b)(5).

160. See *id.* § 1547(a).

161. *Id.* § 1547(a)(7).

162. *Id.* § 1547(a)(9).

163. See, e.g., Darren Kramer, *Thieves Stealing Books from West Hartford Library*, NEWS8, <https://www.wtnh.com/news/connecticut/hartford/thieves-stealing-books-from-west-hartford-library/> [<https://perma.cc/B9R3-2PNR>] (Sept. 29, 2023, 3:39 AM).

164. See, e.g., 15 ILL. COMP. STAT. 320/13 (2023) (specifying that “fines and charges for any books or other items lost” or for the violation of library rules are civil fines); TEX. LOC. GOV’T CODE ANN. § 323.072 (West 2023) (delegating the power to create “reasonable regulations that prohibit a person from abusing library services by intentionally failing to pay a library fine or return library property” and specifying that violation of these regulations results in liability “for a civil penalty of not more than \$100 for each violation”).

notice of one's failure to do so.¹⁶⁵ At least 21 states have criminal laws punishing the failure to return materials.¹⁶⁶ These states include California, Georgia, Idaho, Illinois, Iowa, Maine, Massachusetts, Minnesota, Missouri, Nevada, New Hampshire, New York, North Carolina, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Utah, Vermont, Virginia, and West Virginia.¹⁶⁷

As noted above, in prohibiting library theft, Iowa law creates a presumption that one intends to permanently deprive another of property if one fails to return library materials.¹⁶⁸ Specifically, if one fails to return library materials for two months or more beyond the due date of library materials, or one month beyond the due date of library equipment, this is evidence of intent to deprive the owner of that property as long as the library made a reasonable attempt to notify the person that the material or equipment was overdue.¹⁶⁹

Many states require libraries to give notice to a patron before that person is deemed to have violated a failure to return law. Rhode Island's and Minnesota's notice periods appear to be the longest—requiring written notice, followed by a period of 60 days before the law is violated.¹⁷⁰ California's, Idaho's, Illinois', Nevada's, New York's, North Carolina's, Pennsylvania's, Utah's, Vermont's and Virginia's failure to return statutes are not violated until 30 days after a person receives notice, typically written, demanding the return of library materials.¹⁷¹ Massachusetts also has a 30-day notice provision, although its law does not require

165. CAL. EDUC. CODE § 19911 (West 2023); GA. CODE ANN. § 20-5-53 (2023); IDAHO CODE § 33-2620 (2023); 720 ILL. COMP. STAT. 5/16-3(c) (2023); IOWA CODE §§ 714.1, .5 (2023); ME. STAT. tit. 17-A, § 360(C) (2023); MASS. GEN. LAWS. ch. 266, § 99A (2023); MINN. STAT. § 609.541 (2023); MO. REV. STAT. § 570.210(1)(3) (2023); NEV. REV. STAT. § 379.160(1) (2023); N.H. REV. STAT. ANN. §§ 202-A:25, 625:9 (2023); N.Y. EDUC. LAW § 265 (McKinney 2023); N.C. GEN. STAT. § 125-11 (2023); OKLA. STAT. tit. 21, § 1739(B)(3) (2023); 18 PA. CONS. STAT. § 6708(a) (2023); 11 R.I. GEN. LAWS § 11-41-14.1(a) (2023); S.C. CODE ANN. § 16-13-340 (2023); UTAH CODE ANN. § 76-6-803.30 (West 2023); VT. STAT. ANN. tit. 22, § 111(b) (2023); VA. CODE ANN. § 42.1-74 (2023); W. VA. CODE § 10-1-11 (2023).

166. See statutes cited *supra* note 165.

167. See statutes cited *supra* note 165.

168. IOWA CODE § 714.5(2) (2023).

169. *Id.*

170. See MINN. STAT. § 609.541 (2023); 11 R.I. GEN. LAWS § 11-41-14(a) (2023).

171. CAL. EDUC. CODE § 19911 (West 2023); IDAHO CODE § 33-2620 (2023); 720 ILL. COMP. STAT. 5/16-3(c) (2023); NEV. REV. STAT. § 379.160(1) (2023); N.Y. EDUC. LAW § 265 (McKinney 2023); N.C. GEN. STAT. § 125-11 (2023); 18 PA. CONS. STAT. § 6708(a) (2023); UTAH CODE ANN. § 76-6-803.30 (West 2023); VT. STAT. ANN. tit. 22, § 111(b) (2023); VA. CODE ANN. § 42.1-74 (2023).

notice to be in writing.¹⁷² Georgia, New Hampshire, and South Carolina require 15 days' written notice before their laws are violated.¹⁷³ Oklahoma requires seven days "after demand has been made for the return of the library materials."¹⁷⁴ Maine's notice requirement is "so lengthy a period beyond the specified time for return as to render the retention or possession or other failure to return a gross deviation from the agreement" but specifies that this condition is met if one fails to return materials within five days of receiving written notice.¹⁷⁵ Missouri and Iowa appear to be the only states without a notice requirement for particular violations, although Missouri law creates a presumption that a person intended to deprive a library of their materials if that person receives written notice to return the materials and does not do so, and Iowa law does require that its failure to return provisions be posted in "clear public view in all public libraries" and other libraries.¹⁷⁶

Sticking with Missouri and its presumption—Missouri's failure to return crime prohibits the failure to return borrowed library materials, but it does not set forth an intent element for that crime.¹⁷⁷ The absence of an intent element seems significant because its law against unauthorized removal and destruction of materials both include elements that the person knowingly engage in the unlawful conduct.¹⁷⁸ Even though there is no intent element attached to the failure to return law, Missouri's prohibition includes an extensive provision stating that it is prima facie evidence that a person's purpose was to deprive the library of materials if they fail to return the materials within 10 days of receiving written notice by certified mail.¹⁷⁹ While this prima facie notice provision appears out of place in a statute that includes no specific intent elements, it does go on to note that paying the library "an amount equal to the cost of replacement of an item of no historical significance" is considered returning the item.¹⁸⁰

Penalties for violating failure to return statutes are relatively light when compared with states' library theft and material destruction statutes. California, Georgia, Idaho, Maine, Minnesota, New York, North Carolina, Oklahoma, South

172. See MASS. GEN. LAWS ch. 266, § 99A (2023).

173. GA. CODE ANN. § 20-5-53 (2023); N.H. REV. STAT. ANN. § 202-A:25 (2023); S.C. CODE ANN. § 16-13-340 (2023).

174. OKLA. STAT. tit. 21, § 1739(B)(3) (2023).

175. See ME. STAT. tit. 17-A, § 360(C) (2023).

176. See IOWA CODE § 714.5(2) (2023); MO. REV. STAT. § 570.210(2) (2023).

177. MO. REV. STAT. § 570.210(1)(3) (2023).

178. *Id.* § 570.210(1)(1), (4).

179. *Id.* § 570.210(2).

180. *Id.*

Carolina, Virginia, and West Virginia all punish failure to return library materials as misdemeanors.¹⁸¹ Pennsylvania treats failure to return as a “summary offense,” punishable by up to 90 days in jail.¹⁸²

Some states’ punishments are even lighter.¹⁸³ The maximum penalty for failure to return in Massachusetts is a fine of \$500 per item, plus the replacement value of the materials at issue.¹⁸⁴ Nevada and Vermont also provide for a punishment of \$500, though their laws do not include a restitution requirement.¹⁸⁵ New Hampshire’s failure to return statute punishes failure to return materials as a violation, which “does not constitute a crime.”¹⁸⁶ Rhode Island punishes failure to return with a fine of \$25 plus restitution for the value of the book if it is lost, destroyed, or never returned.¹⁸⁷

Some states, however, are tougher. Illinois treats failure to return as a misdemeanor unless the value of the materials at issue exceeds \$300, in which case failure to return is a Class 3 felony, punishable by a minimum of two years and a maximum of five years in prison.¹⁸⁸ Because all of Missouri’s library crimes, including failure to return, are tied to its theft statute, failure to return is punishable as theft and therefore may be punished by imprisonment of up to 7 years if the materials withheld are worth more than \$750 and up to 10 years if the materials withheld are worth more than \$25,000.¹⁸⁹ Utah is similar, punishing library theft as theft and therefore punishing failure to return with 1 to 15 years in prison if the value of the materials is \$5,000 or more and up to 5 years if the value of the materials is between \$1,500 and \$5,000.¹⁹⁰

181. CAL. EDUC. CODE § 19911 (West 2023); GA. CODE ANN. § 20-5-53 (2023); IDAHO CODE §§ 18-2408(3), 33-2620 (2023); ME. STAT. tit. 17-A, §§ 360, 1604 (2023); MINN. STAT. § 609.541 (2023); N.Y. EDUC. LAW § 265 (McKinney 2023); N.C. GEN. STAT. § 125-11 (2023); OKLA. STAT. tit. 21, § 1739(C) (2023); S.C. CODE ANN. § 16-13-340 (2023); VA. CODE ANN. § 42.1-74 (2023); W. VA. CODE § 10-1-11 (2023).

182. 18 PA. CONS. STAT. § 6708(a) (2023); 101 PA. CODE § 15.66(a)(8) (2023).

183. *See, e.g.*, MASS. GEN. LAWS. ch. 266, § 99A (2023); NEV. REV. STAT. § 379.160(1) (2023); VT. STAT. ANN. tit. 22, § 111(b) (2023).

184. MASS. GEN. LAWS ch. 266, § 99A (2023).

185. *See* NEV. REV. STAT. § 379.160(1) (2023); VT. STAT. ANN. tit. 22, § 111(b) (2023).

186. N.H. REV. STAT. ANN. §§ 202-A:25, 625:9 (2023).

187. 11 R.I. GEN. LAWS § 11-41-14(a) (2023).

188. *See* 720 ILL. COMP. STAT. 5/16-3(d) (2023); 730 ILL. COMP. STAT. 5/5-4.5-40(a) (2023).

189. MO. REV. STAT. §§ 558.011(1)(3)–(4), 570.030(4)–(5), .210 (2023).

190. UTAH CODE ANN. §§ 76-6-412(a)–(b), -801, -805 (West 2023).

D. Excluding Patrons and Employees

1. Prohibitions on Sex Offenders

People convicted of sex offenses often remain “deeply enmeshed in the carceral state” after serving their sentences as a result of extensive laws and regulations setting forth “registration, community notification, and residency restrictions.”¹⁹¹ Several states prohibit those convicted of certain sex offenses from entering or working at public libraries.¹⁹²

In North Carolina, people convicted of sex offenses including rape, statutory rape, sexual battery, and any sex offense in which the victim was under the age of 18 years, are prohibited from being at places “where minors frequently congregate, including . . . libraries . . . when minors are present.”¹⁹³ Louisiana law contains a general restriction prohibiting those convicted of sex offenses whose victims were under the age of 13 years from loitering within 1,000 feet of libraries or being present on public library property.¹⁹⁴ The law, however, goes on to require public library governing boards to develop plans to regulate access of sex offenders to their public libraries and provides that those sex offenders who comply with these requirements are not in violation of the law.¹⁹⁵ South Dakota restricts people required to register as sex offenders from “loiter[ing]” within public libraries.¹⁹⁶

Florida law sets forth a list of conditions that must be included for those on probation or under community control for certain sex offenses.¹⁹⁷ Those convicted of a variety of sexual offenses involving minors are subject to a host of mandatory probation conditions, including a prohibition on working for pay or on a volunteer basis at “any place where children regularly congregate, including . . . libraries.”¹⁹⁸ Iowa prohibits sex offenders who have been convicted of sex offenses against a

191. MARIE GOTTSCHALK, *CAUGHT: THE PRISON STATE AND THE LOCKDOWN OF AMERICAN POLITICS* 204 (Princeton Univ. Press 2015).

192. *See, e.g.*, LA. STAT. ANN. § 14:91.2(A)(5)–(6) (2023); N.C. GEN. STAT. § 14-208.18(a)(3)–(c) (2023).

193. N.C. GEN. STAT. § 14-208.18(a)(3)–(c) (2023). The law references those convicted of crimes set forth in Article 7B, which includes rape, statutory rape, and sexual battery, among other crimes. *See id.* §§ 14-27.21 to .33a.

194. LA. STAT. ANN. § 14:91.2(A)(5)–(6) (2023).

195. *Id.* § 14:91.2(D).

196. S.D. CODIFIED LAWS § 22-24B-24 (2023).

197. FLA. STAT. § 948.30 (2023).

198. *Id.* § 948.30(f).

minor from being present in public libraries “without the written permission of the library administrator” and from being employed by public libraries.¹⁹⁹

Other state laws pertaining to sexual offenses reference libraries less directly. Wyoming, like many states, has a detailed statutory scheme setting forth registration requirements for people convicted of qualifying sexual offenses—including requirements that these people notify law enforcement agencies of where they reside and of any changes in residence.²⁰⁰ Under Wyoming law, a person may not necessarily “reside” in only houses or apartments, but potentially in “[t]emporary residences such as hotels, motels, . . . libraries or other places the offender may frequent and use for shelter or other activities of daily living.”²⁰¹

2. Background Checks for Library Employment

Hawaii limits the scope of background checks that employers may conduct, requiring that background checks only take place after an individual receives a conditional job offer and limiting a check of prior convictions to a seven-year span for felonies and a five-year span for misdemeanors.²⁰² This prospective offer and background check time limitation, however, does not apply to certain employers who are “expressly permitted to inquire into an individual’s criminal history for employment purposes.”²⁰³ This category includes public libraries, meaning that prospective employees with older criminal offenses may have those convictions come up in background checks for library employment.²⁰⁴

3. Library Trespass

Many states have general trespass statutes that forbid people from accessing property without authorization or remaining on certain property after being asked

199. IOWA CODE § 692A.113(1)(f), (3)(c) (2023).

200. See WYO. STAT. ANN. § 7-19-302(a) (2023).

201. *Id.* § 7-19-301(a)(xi)(C).

202. See HAW. REV. STAT. § 378-2.5(b)–(c) (2023).

203. *Id.* § 378-2.5(d) (2023).

204. See *id.*

to leave.²⁰⁵ Some state trespass restrictions can be quite complicated—describing and prohibiting many variations of trespass.²⁰⁶

South Carolina specifically prohibits library trespass.²⁰⁷ Under South Carolina law, “[a] person who enters a public library, without legal cause or good excuse, after having been warned not to do so by the library director [or] the branch manager . . . is guilty of a misdemeanor” and subject to a fine of up to \$200 or up to 30 days in jail.²⁰⁸ The warning “must be given to the person in writing, in the presence of a law enforcement officer,” and must set forth the violation giving rise to the prohibition on entry, how long that prohibition will last, and how that person may appeal the prohibition.²⁰⁹

4. *Gun and Drug Prohibitions*

While the possession and sale of illegal drugs are generally prohibited by law, several states use punishment enhancements to amplify the penalties for certain drug offenses that occur in and around libraries. The District of Columbia, for example, has created “drug free zones” that encompass “[a]ll areas within 1,000 feet of” certain properties including pools, schools, public housing, and public libraries.²¹⁰ Punishment for the distribution and possession of controlled substances is doubled within these zones.²¹¹ Tennessee law creates similar “drug-free zones,” although they are smaller—encompassing the 500 feet around public libraries and other designated properties—and less harsh—providing for enhanced fines for drug offenses in these zones but not additional incarceration.²¹² West Virginia law provides that people convicted of distributing narcotics or methamphetamine within 200 feet of a library are ineligible for parole for three years, while those convicted of selling any other controlled substance within 200

205. *See, e.g.*, FLA. STAT. § 810.08(1) (2023) (describing the crime of trespass as entering or remaining in a structure or conveyance without authorization, or remaining in a structure or conveyance after being told to leave); D.C. CODE § 22-3302 (2023) (setting forth a similar trespass law).

206. *See, e.g.*, CAL. PENAL CODE §§ 602.2, .5, .6, .11, .12, .13 (West 2023) (setting forth crimes against general trespass, trespass due to failure to vacate land, airport trespass, trespass on zoos, trespass on land under cultivation, trespass in healthcare facilities, entering the residence of academic researchers with the purpose of interfering with their research, and other variations).

207. S.C. CODE ANN. § 16-11-625 (2023).

208. *Id.* § 16-11-625(A)(1).

209. *Id.* § 16-11-625(A)(2).

210. D.C. CODE § 48-904.07a(a) (2023).

211. *Id.* § 48-904.07a(b).

212. *See* TENN. CODE ANN. § 39-17-432 (2023).

feet of a library are ineligible for parole for two years.²¹³ Michigan punishes those who deliver controlled substances within 1,000 feet of a library, punishing such conduct with at least two years in prison or, at most, triple what they would be sentenced to otherwise.²¹⁴ Utah prohibits the production, distribution, and possession with intent to distribute “a controlled or counterfeit substance . . . in or on the grounds of a library when the library is open to the public” or within 100 feet of a library.²¹⁵ Violation of this statute enhances the penalties one would otherwise face for the conduct under Utah’s other drug prohibitions—establishing a minimum five-year prison sentence and prohibiting suspended sentences or probation for any violation that would otherwise be a first-degree felony, and increasing lesser violations by one degree of severity.²¹⁶

Virginia creates a distinct offense for the sale of drugs in and around libraries.²¹⁷ Virginia law provides for a “separate and distinct felony” for the manufacture, sale, or possession with intent to sell controlled substances, including marijuana, on public library property.²¹⁸ Violation of this law is punishable by a prison sentence of at least one year and at most five years, along with a fine of up to \$100,000.²¹⁹

The District of Columbia and New York also have laws specifically targeting the possession of firearms at or near libraries.²²⁰ The District of Columbia’s law is formulated in a similar manner to its drug prohibition law, doubling the sentence of any illegal gun possession within 1,000 feet of a public library (among other areas).²²¹ New York has an independent felony prohibition of the possession of firearms “in a sensitive location,” including libraries.²²² Unlike the District of Columbia, the firearm possession need not be independently illegal.²²³

213. W. VA. CODE §§ 60A-4-401(a)(i)–(ii), -406(a)(3), -406(b)(3) (2023).

214. *See* MICH. COMP. LAWS § 333.7410(2) (2023).

215. *See* UTAH CODE ANN. § 58-37-8(1), (4)(a)(vi) (West 2023).

216. *See id.* § 58-37-8(4)(b)–(c).

217. *See* VA. CODE ANN. § 18.2-255.2(A)(5) (2023).

218. *Id.* § 18.2-255.2(A)(5), (B).

219. *Id.*

220. *See* D.C. CODE § 22-4502.01(a)–(b) (2023); N.Y. PENAL LAW § 265.01-e (McKinney 2023).

221. D.C. CODE §§ 22-4502.01(a)–(b), 48-904.07a(a) (2023).

222. N.Y. PENAL LAW § 265.01-d (McKinney 2023).

223. *See* D.C. CODE §§ 22-9502.01(a)–(b) (2023); N.Y. PENAL LAW § 265.01-d (McKinney 2023).

E. Library Nuisance Crimes

1. Disturbing the Peace

Massachusetts law provides that: “Whoever willfully disturbs persons assembled in a public library, or a reading room connected therewith, by making a noise or in any other manner during the time when such library or reading room is open to the public shall be punished as provided in the preceding section.”²²⁴ It is a bit of a mystery what the precise punishment for violation of this statute is. The disturbing-the-peace-statute appears in Chapter 272, Section 41 of Massachusetts’ code. As currently constituted, the section immediately preceding is Section 40A which punishes the possession, distribution, or sale of alcoholic beverages on public school premises with imprisonment of up to 30 days and a fine of up to \$100.²²⁵ This seems like an odd statute for a library disruption statute to reference. More natural is Section 40—which prohibits the willful interruption or disturbance of an assembly of people for a lawful purpose, punishing such disruption with up to one month in jail and a fine of \$50.²²⁶ Indeed, it appears that Section 40A is a more recent addition to the statute and that, when drafted, Section 41’s reference to the punishment in the “preceding section” would have referred to Section 40, rather than the then-nonexistent 40A.²²⁷

Does Massachusetts’ library disruption law’s reference to a “preceding section” refer to the preceding section that existed when the law was enacted?²²⁸ Does the enactment of Section 40A constitute an unwritten revision to Section 41 by changing the preceding statute?²²⁹ These difficult questions have, unfortunately, gone unanswered in the courts—meaning that it remains an open question whether disrupting a public library in Massachusetts is punishable by a fine of \$100 or \$50.²³⁰

2. Smoking

Under Massachusetts law, smoking is prohibited in a wide variety of places, such as “workplaces, work spaces, . . . staircases, restrooms, restaurants, cafes, coffee shops,” and other locations—including libraries.²³¹ Owners, managers, or

224. MASS. GEN. LAWS ch. 272, § 41 (2023).

225. *See id.* § 40A.

226. *See id.* § 40.

227. *See* 1962 Mass. Acts 317 (adding section 40A in 1962).

228. *See* MASS. GEN. LAWS ch. 272, § 41 (2023).

229. *See id.* § 40A.

230. *See id.* §§ 40, 40A.

231. MASS. GEN. LAWS ch. 270, § 22(b)(2) (2023).

those in control of these locations who permit smoking on the premises are liable to an increasing set of fines, ranging from \$100 to \$300, depending on the number of prior violations that have occurred within the preceding two years.²³² These fines may be pursued in criminal proceedings or as civil violations.²³³ Individuals who smoke in libraries are “subject to a civil penalty of \$100 for each violation.”²³⁴

Ohio and Texas also prohibit smoking in libraries, among other places.²³⁵ Violating Ohio’s law is a “minor misdemeanor,” which is punishable by a fine of up to \$150.²³⁶ Violating Texas’s law is a Class C misdemeanor, punishable by a fine of up to \$500.²³⁷ Those clever scamps who think they can escape the long arm of library smoking laws by vaping instead will run into trouble in Texas, which goes out of its way to apply its prohibition to e-cigarettes as well as tobacco products.²³⁸

3. Spitting

Completing the library nuisance crime trifecta, Massachusetts punishes not only disturbing the peace and smoking, but also spitting in the library.²³⁹ Specifically, Massachusetts outlaws spitting on public sidewalks, in city or town halls (unless one is spitting in “receptacles provided for the purpose”), in museums, in lecture or music halls, in the “hall of any tenement building occupied by five or more families,” in schools, on ferries, in railway cars (except smoking cars), in churches or theatres, and in public libraries.²⁴⁰ Those who commit this crime face a fine of up to \$20.²⁴¹

F. Criminal Fines or Fees Directed to Libraries

Several states’ laws contain mechanisms for channeling the proceeds of fines and penalties for crimes that may not have anything to do with libraries or library

232. *Id.* § 22(l).

233. *Id.* § 22(m)(2).

234. *Id.*

235. *See* OHIO REV. CODE ANN. § 3791.031(A)(2), (B) (West 2023); TEX. PENAL CODE ANN. § 48.01(a-1) (West 2023).

236. OHIO REV. CODE ANN. §§ 698.02(F)(1)(B)(1)(e), 3791.031(E) (West 2023).

237. TEX. PENAL CODE ANN. §§ 12.23, 48.01(b)(f) (West 2023).

238. *Id.* § 48.01(a)–(a-1).

239. MASS. GEN. LAWS ch. 270, § 14 (2023).

240. *Id.*

241. *Id.*

materials into the funding of libraries.²⁴² At least 14 states contain such laws at the state or local level, including Alabama, Arkansas, California, Connecticut, Georgia, Illinois, Kansas, Louisiana, Maryland, Michigan, Minnesota, North Carolina, Ohio, and Pennsylvania.²⁴³

242. See ALA. CODE §§ 45-17-80, -28-81.02, -39-81 (2023); ARK. CODE ANN. § 21-6-401(a)(1), (e) (2023); CAL. VEH. CODE § 14607.6(e)(4), (7) (West 2023); CONN. GEN. STAT. §§ 10a-79, -92, -139(b) (2023); GA. CODE ANN. § 36-15-9(a) (2023); 75 ILL. COMP. STAT. 16/1-20(c) (2023); KAN. STAT. ANN. § 20-3129(a) (2023); LA. STAT. ANN. §§ 13:2562.22(B), (D), :996.32(A), (C), :996.38(A), (C), 15:571.11(A)(1)(a) (2023); MD. CODE ANN., CTS. & JUD. PROC. § 7-204 (West 2023); MICH. CONST. art. VIII, § 9; MICH. COMP. LAWS § 397.32(2) (2023); MINN. STAT. § 134A.09 (2023); N.C. GEN. STAT. § 7A-304(a)(2) (2023); OHIO REV. CODE ANN. § 307.515(A) (West 2023); 42 PA. CONS. STAT. § 21141(3) (2023).

243. ALA. CODE §§ 45-17-80, -28-81.02, -39-81 (2023) (providing for imposition of fees in criminal cases to fund the county law libraries in Lauderdale, Etowah, and Colbert counties); ARK. CODE ANN. § 21-6-401(a)(1), (e) (2023) (providing for a fee of \$150 for misdemeanor appeals that are to be deposited into a fund for the “maintenance and improvement of the Supreme Court Library”); CAL. VEH. CODE § 14607.6(e)(4), (7) (West 2023) (providing for a partial distribution of a \$100 filing fee to recover impounded vehicles to county law library funds); CONN. GEN. STAT. §§ 10a-79, -92, -139(b) (2023) (permitting the distribution of fines imposed on University of Connecticut, Connecticut State University, and Connecticut community-technical college students for traffic enforcement and parking violations to be distributed to those schools’ “library services or acquisitions,” among other options); GA. CODE ANN. § 36-15-9(a) (2023) (establishing a five dollar fee to be charged in all actions to be remitted to the trustees of county law libraries in counties where such libraries are established); 75 ILL. COMP. STAT. 16/1-20(c) (2023) (stating violations of ordinances “involving injury to or failure to return any book, material, or property belonging to the library shall be paid into the Library Fund established under Section 35-25” and all fines and penalties for injuries to library property are to be paid “into the fund of the public agency or body enforcing those ordinances”); KAN. STAT. ANN. § 20-3129(a) (2023) (providing for a library fee between \$2 and \$10 in felony cases and between \$0.50 and \$7 in other cases, all to be added to the docket fee of each case with funds to be directed to “the benefit and account of the law library in each county”); LA. STAT. ANN. §§ 13:2562.22(B), (D), :996.32(A), (C), :996.38(A), (C), 15:571.11(A)(1)(a) (2023) (including examples of district and parish-specific statutes that provide for certain fees upon conviction to be transferred to judicial expense funds which may be used for a variety of purposes, including establishing and maintaining law libraries for the courts); MD. CODE ANN., CTS. & JUD. PROC. § 7-204 (West 2023) (describing fees to be collected in various counties that are to be directed to county library funds, among other things); MICH. CONST. art. VIII, § 9; MICH. COMP. LAWS § 397.32(2) (2023) (providing, by constitution and statute, that fines assessed and collected in counties, townships, and localities be applied to public libraries); MINN. STAT. § 134A.09 (2023) (permitting courts in Hennepin and Ramsey Counties to include in costs assessed against defendants convicted of violating statutes or municipal ordinances, a law library fee); N.C. GEN. STAT. § 7A-304(a)(2) (2023) (providing for the imposition of a \$30 “facilities fee” in every case where a criminal defendant is convicted; the fee is to be paid to the municipality for maintaining and constructing a law library and obtaining books for that library,

Michigan appears to be the state with the strongest legal regime requiring the proceeds of criminal fines to be directed to libraries. This requirement appears in Michigan's state constitution, which provides that: "All fines assessed and collected in the several counties, townships and cities for any breach of the penal laws shall be exclusively applied to the support of such public libraries, and county law libraries as provided by law."²⁴⁴

In accordance with this provision, Michigan statutes require that the proceeds of criminal fines be directed to the funding of libraries.²⁴⁵ Michigan law contains a general requirement, applying to "[t]he proceeds of all fines for any breach of the penal laws of this state when collected in any county and paid into the county treasury," and requiring that these proceeds be apportioned among public and county libraries or county library boards.²⁴⁶ Any county that has not established a public library but which, instead, is "contracting for public library service with the governing body of a legally established public library" is entitled to a per capita share of penal fine money as though it had its own library.²⁴⁷

Other states delegate the power to direct fines and fees to the funding of libraries to municipalities. Florida authorizes county commissioners to adopt an ordinance requiring "an additional court cost, not to exceed \$65, to be imposed by the court when a person pleads guilty or nolo contendere to, or is found guilty of, or adjudicated delinquent for, any felony, misdemeanor, delinquent act, or criminal traffic offense."²⁴⁸ Twenty-five percent of the amount collected through this fee must be "allocated to fund personnel and legal materials for the public as part of a law library."²⁴⁹ Washington provides that certain cities have the power to establish

among various other purposes); OHIO REV. CODE ANN. § 307.515(A) (West 2023) (requiring that at least 25 percent of all fines, penalties, and forfeited bail a municipal court collects for "offenses and misdemeanors brought for prosecution in the name of a municipal corporation under one of its penal ordinances, where there is in force a state statute under which the offense might be prosecuted" be designated to a county law library fund, and setting numeric maximums of how much must be set aside based on county population); 42 PA. CONS. STAT. § 21141(3) (2023) (requiring that county clerks of courts set certain fees to be imposed in misdemeanor and felony cases, that these fee amounts be set annually; and that the amounts "bear a reasonable relationship" to the cost of operating the office of clerk of courts, the clerk's expenses "attributed to those functions required to process criminal actions" and "a reasonable share of the cost of maintaining a public law library").

244. MICH. CONST. art. VIII, § 9.

245. See MICH. COMP. LAWS §§ 397.32(2), .35 (2023).

246. *Id.* § 397.32(2).

247. *Id.* § 397.35.

248. FLA. STAT. § 939.185(1)(a) (2023).

249. *Id.*

and maintain public libraries and to pass ordinances setting a “percent of all moneys collected for fines, penalties, and licenses” in support of these city libraries.²⁵⁰ Kentucky permits county circuit judges to issue orders requiring \$.50 and \$1.00 fees to be added as costs in criminal matters for the funding of local law libraries.²⁵¹ These orders are to be issued “[u]pon petition of three-fourths (3/4) of the duly licensed and practicing attorneys resident in the county.”²⁵²

G. Delegation of Drafting Library Crimes to Municipalities

While this Article focuses on state-level library crimes rather than municipal library crimes, this coverage would be incomplete without a mention of states that delegate the power to create crimes to local governments. Several states have laws doing so, including Arizona, Arkansas, Connecticut, Kansas, Kentucky, Michigan, Missouri, and Virginia.²⁵³ The subject matter of these delegations reflect many of the crimes discussed above, including failure to return materials and damaging or destroying library materials.²⁵⁴ Many of these states give municipalities a

250. WASH. REV. CODE § 35.22.280(19) (2023).

251. KY. REV. STAT. ANN. § 172.180(1), (3)(a) (West 2023).

252. *Id.* § 172.180(1).

253. ARIZ. REV. STAT. ANN. § 9-419(A) (2023) (permitting cities and towns with public libraries to “pass ordinances for the protection of the library and library property, and imposing penalties for punishment of persons committing injury to the library or its property or books, or for failure to return a book or other library property”); ARK. CODE ANN. §§ 13-2-408, -506 (2023) (permitting county quorum courts to pass ordinances penalizing those who injure or fail to return books belonging to their libraries, and permitting cities to pass ordinances imposing penalties for the same conduct at city libraries); CONN. GEN. STAT. § 11-35 (2023) (permitting city councils to pass ordinances “imposing suitable penalties for damaging the grounds or other property of such library and for damaging or failing to return any book belonging to such library”); KAN. STAT. ANN. § 12-1228 (2023) (permitting municipalities “to pass laws or ordinances imposing suitable penalties for the punishment of injury committed to library buildings or other property and for injury to or failure to return any book or other library material belonging to such library”); KY. REV. STAT. ANN. § 173.030(2) (West 2023) (permitting certain cities’ legislative bodies to pass ordinances “providing for the punishment of persons injuring the library property and regulating the conduct of persons using the library”); MICH. COMP. LAWS § 397.208(8) (2023) (permitting city councils to pass ordinances “imposing suitable penalties for the punishment of persons committing injury upon such library, or the grounds or other property thereof, or for wilful injury to or failure to return any book belonging to such library”); MO. REV. STAT. §§ 182.460, 182.240 (2023) (authorizing city ordinances penalizing the injury of library books or property or failure to return library materials); VA. CODE ANN. § 15.2-926(A), (C) (2023) (permitting localities to pass ordinances prohibiting loitering in public places, including public libraries).

254. *See, e.g.*, CONN. GEN. STAT. § 11-35 (2023) (permitting city councils to pass ordinances “imposing suitable penalties for damaging the grounds or other property of such library and for damaging or failing to return any book belonging to such library”).

generalized authority to impose “suitable penalties,” for the identified misconduct.²⁵⁵ There are not too many cases describing the limits of the “suitable penalties” phrase in the statutes at issue.²⁵⁶ Virginia has upheld an ordinance providing for a fine and up to 30 days in jail under an ordinance passed in accordance with a similarly worded statute, and Kansas previously upheld an ordinance providing for a fine between \$10 and \$100 as “suitable penalties.”²⁵⁷

H. Librarian Crimes

Many of the preceding crimes appear to target patrons of libraries—interlopers who would see the quiet, calm, informative, and educational aspects of libraries undermined through theft, destruction, and disruption.²⁵⁸ A number of laws also create crimes specific to misconduct by librarians.

1. Privacy in Library Records

Several states have laws designating records of what library patrons have requested or checked out as confidential.²⁵⁹ In some states, violating these library privacy laws may carry criminal penalties.²⁶⁰ Jurisdictions that criminalize the

255. See, e.g., KAN. STAT. ANN. § 12-1228 (2023) (permitting municipalities “to pass laws or ordinances imposing suitable penalties for the punishment of injury committed to library buildings or other property and for injury to or failure to return any book or other library material belonging to such library”); MICH. COMP. LAWS § 397.208(8) (2023) (permitting city councils to pass ordinances “imposing suitable penalties for the punishment of persons committing injury upon such library, or the grounds or other property thereof, or for willful injury to or failure to return any book belonging to such library”).

256. *But see, e.g.*, *Benson v. City of Norfolk*, 177 S.E. 222 (Va. 1934); *City of Lawrence v. Monroe*, 24 P. 1113 (Kan. 1890).

257. See *Benson*, 177 S.E. at 222–24; *Monroe*, 24 P. at 1113–14. Where a delegation includes specific language limiting the permitted ordinance, however, states may strike down those ordinances. See *Boyles v. City of Roanoke*, 19 S.E.2d 662, 662–63 (Va. 1942) (holding that a municipal ordinance providing for a penalty of up to one year in jail was void, as the municipality was only authorized to pass an ordinance providing for up to six months in jail).

258. See *supra* Part II.A–E. Although concerning library theft, this is not entirely the case in light of the significant number of thefts carried out by librarians themselves. See F.W. Ratcliffe, *Changing Times? Crime and Security as a Major Issue in Libraries*, in *SECURITY AND CRIME PREVENTION IN LIBRARIES*, 1, 7 (Michael Chaney & Alan F. MacDougal eds., Ashgate 1992).

259. See, e.g., ARIZ. REV. STAT. ANN. § 41-151.22(A) (2023); COLO. REV. STAT. § 24-90-119(1) (2023); D.C. CODE § 39-108(a) (2023); FLA. STAT. § 257.261(1) (2023); 5 GUAM CODE ANN. § 80123(a) (2023); 11 R.I. GEN. LAWS § 11-18-32 (2023).

260. See, e.g., statutes cited *supra* note 259.

disclosure of patrons' library information, including information of requested materials and materials checked out from libraries, include Arizona, Colorado, the District of Columbia, Florida, Guam, and Rhode Island.²⁶¹

Colorado's law is a good representative of a library privacy law.²⁶² Its law begins by identifying protected records as "any record or other information that identifies a person as having requested or obtained specific materials or service or as otherwise having used the library."²⁶³ "Any library official, employee, or volunteer who discloses [this] information" is deemed to have committed a civil infraction and may be fined up to \$300.²⁶⁴ Library privacy is not absolute, however. Colorado permits the disclosure of library records "[w]hen necessary for the reasonable operation of the library," when the patron consents, pursuant to a court order or subpoena, and to parents or guardians with access to minors' library cards.²⁶⁵

Punishments for violating library privacy laws tend to be relatively light when compared with the crimes discussed so far. Colorado and the District of Columbia both punish violations with fines of up to \$300.²⁶⁶ Arizona punishes violations with penalties of up to 30 days in jail and fines of up to \$500.²⁶⁷ Florida and Guam punish violations with up to 60 days in jail and fines of up to \$500.²⁶⁸ Rhode Island is most severe, punishing library privacy violations with imprisonment of up to six months, a fine of up to \$1,000, or both.²⁶⁹

2. Discrimination

Massachusetts and Washington both have laws prohibiting discrimination in public accommodations, including libraries.²⁷⁰ Massachusetts prohibits discrimination based on a person's "religious sect, creed, class, race, color, denomination, sex, gender identity, sexual orientation, . . . nationality, or . . . deafness or blindness, or any physical or mental disability."²⁷¹ Washington

261. See statutes cited *supra* note 259.

262. See COLO. REV. STAT. § 24-90-119 (2023).

263. *Id.* § 24-90-119(1).

264. *Id.* § 24-90-119(3).

265. *Id.* § 24-90-119(2).

266. See *id.* § 24-90-119(3); D.C. CODE § 39-108(d) (2023).

267. ARIZ. REV. STAT. ANN. §§ 13-707(A)(3), -802(c), 41-151.22 (2023).

268. FLA. STAT. §§ 257.261(4), 775.082(4)(b), .083(1)(e) (2023); 5 GUAM CODE ANN. § 80123(c) (2023); 9 GUAM CODE §§ 80.34(b), .50(d) (2023).

269. 11 R.I. GEN. LAWS § 11-18-32(c) (2023).

270. See MASS. GEN. LAWS ch. 272, § 92A (2023); WASH. REV. CODE § 9.91.010(d) (2023).

271. MASS. GEN. LAWS ch. 272, § 92A (2023).

prohibits discrimination based on a person's "race, creed, or color."²⁷² Violations of these discrimination laws by libraries or library employees are misdemeanors.²⁷³

3. Other Librarian Crimes

This Subpart addresses a smattering of other crimes pertaining to librarians across the states. Many of these laws are fairly specific. For example, under Georgia law, if a library operator fails to post a notice that a library is being fumigated, that operator is guilty of a misdemeanor and may be fined \$100.²⁷⁴ New Hampshire takes a broader approach, however, setting forth a detailed statutory scheme for the operation of libraries, role of library trustees, annual report requirements, and the powers and duties of librarians, among other things.²⁷⁵ The law provides that "[a]ny town or library official violating any of the provisions of this chapter shall be guilty of a misdemeanor."²⁷⁶

Texas and Virginia both have criminal laws pertaining to the treatment and retention of official records.²⁷⁷ In Texas, it is a Class A misdemeanor for a private college, university, museum, organization, or library to possess "a local government record," though an affirmative defense can be invoked for an agreement in place for an entity "provid[ing] physical housing for the local government record."²⁷⁸ In Virginia, a custodian of public records is required to deliver those records to the Library of Virginia if he or she has no successor at the end of his or her term in office.²⁷⁹ Failure to do so is a misdemeanor.²⁸⁰

Michigan's laws of evidence contain a library crime as well.²⁸¹ Michigan permits the introduction of a "record, book, or paper belonging to or in the custody of a public, college, or university library" as evidence in a proceeding if it is "accompanied by a sworn statement by the librarian or other person in charge of the record, book, or paper, that the copy is a true copy of the original in his or her

272. WASH. REV. CODE § 9.91.010(d)(2) (2023).

273. MASS. GEN. LAWS ch. 272, § 92A (2023); WASH. REV. CODE § 9.91.010(d)(2) (2023).

274. GA. CODE ANN. § 8-7-1 (2023).

275. See N.H. REV. STAT. ANN. §§ 202-A:1 to -A:25 (2023).

276. *Id.* § 202-A:21.

277. See TEX. LOC. GOV'T. CODE ANN. § 202.009 (West 2023); VA. CODE ANN. § 42.1-88 (2023).

278. TEX. LOC. GOV'T. CODE ANN. § 202.009 (West 2023).

279. VA. CODE ANN. § 42.1-88 (2023).

280. *Id.*

281. See MICH. COMP. LAWS § 600.2136 (2023).

custody.”²⁸² If the librarian’s certification is false, however, that librarian is guilty of a felony “punishable by the same penalty provided by statute for perjury.”²⁸³

Nevada requires school districts’ boards of trustees to purchase new library books, supplies, and textbooks that are “necessary to carry out the mandates of the school curriculum to be used by the pupils of the school district.”²⁸⁴ These books must remain the property of the school district unless sold as authorized by law—in which case, the clerk for the board of trustees must turn over all money received to the county treasurer.²⁸⁵ A violation of any of these provisions is a misdemeanor.²⁸⁶

J. Defenses and Immunity

It is not all just criminal liability for librarians. Several states immunize librarians from prosecution or punishment under certain criminal laws.²⁸⁷ This Subpart surveys these immunization statutes—most of which involve crimes against distributing obscene material and material harmful to minors.

1. Distribution of Obscene Material and Material Harmful to Minors

Many states have laws prohibiting the sale, distribution, or display of obscene materials and materials harmful to minors.²⁸⁸ But many of these laws are limited in scope or provide exceptions when it comes to materials displayed in or distributed by libraries.²⁸⁹

Delaware provides an example of how states may exempt libraries from prohibitions on distributing material harmful to minors. Under Delaware law, it is a misdemeanor to exhibit for sale, display, transfer, or sell materials that the seller knows are “harmful to minors,” as well as to fail to advertise these materials without a disclaimer indicating the material is “unlawful to persons under 17 years of age.”²⁹⁰ Delaware defines “harmful to minors” as: “any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement or sado-masochistic abuse which predominately appeals to the prurient, shameful or

282. *Id.* § 600.2136(1).

283. *Id.* § 600.2136(4).

284. NEV. REV. STAT. § 393.170(1) (2023).

285. *Id.* § 393.170(2), (4), (6).

286. *Id.* § 393.170(7).

287. *See infra* Part II.A.

288. *See, e.g.*, DEL. CODE ANN. tit. 11, § 1365 (2023).

289. *See, e.g., id.*

290. *See id.* § 1365(i).

morbid interest of minors and is patently offensive to prevailing standards in the adult community . . . with respect to what is suitable material for minors.”²⁹¹

While the sale, display, or distribution of these materials is generally prohibited, Delaware’s law exempts several categories of people or actors from prosecution, including public libraries and their employees when they are acting in an official capacity.²⁹² Other states with similar prohibitions and exceptions—either in the form of exemptions from prosecution or affirmative defenses—include Hawaii, Idaho, Illinois, Indiana, Kansas, Maine, Massachusetts, North Carolina, North Dakota, Pennsylvania, South Carolina, and Wisconsin.²⁹³ California requires those who sell or rent “video recordings of harmful matter” to

291. *Id.* § 1365(a)(1).

292. *Id.* § 1365(k)(3).

293. HAW. REV. STAT. § 712-1215 (2023) (exempting the staff of public libraries from the crime of “promoting pornography for minors”); IDAHO CODE §§ 18-1515, -1517 (2023) (creating an affirmative defense to the crime of disseminating material harmful to minors when the defendant was a bona fide public library or employee of a library); 720 ILL. COMP. STAT. 5/11-21(b)–(c) (2023) (creating an affirmative defense for the crime of distributing harmful material to a minor if the defendant was “a bona fide . . . public library” or was acting as an employee of a library); IND. CODE § 35-45-4-6 (2023); KAN. STAT. ANN. § 21-6402(c)(2) (2023) (prohibiting the display or distribution of material harmful to minors and creating an affirmative defense that the defendant is “an officer, director, trustee or employee of a public library” and that the material was “disseminated in accordance with regular library policies approved by its governing body”); ME. STAT. tit. 17, § 2911(2)(A) (2023) (exempting “noncommercial distribution or exhibition for purely educational purposes by any library” from its crime of disseminating obscene material to a minor); MASS. GEN. LAWS ch. 272, § 28 (2023) (creating a defense to prosecution for disseminating harmful material to minors for libraries and their employees); N.C. GEN. STAT. § 14-190.15(c)(2) (2023) (prohibiting the dissemination of material harmful to minors, but creating an affirmative defense that the defendant was a public library or library employee or agent “carrying out a legitimate duty of his employment”); N.D. CENT. CODE § 12.1-27.1-03.1(2)(c) (2023) (exempting public libraries from the crime of displaying materials depicting nudity to minors); 18 PA. CONS. STAT. § 5903(j) (2023) (exempting town, public, school, and university libraries and archives from the crime of disseminating explicit sexual materials to minors); S.C. CODE ANN. § 16-15-385(C)(2) (2023) (prohibiting the dissemination of harmful materials to minors, but creating an affirmative defense that the defendant was a “school, church, museum, public, school, college, or university library” or an employee of such an entity “carrying out a legitimate duty of his employment”—while, at first glance, the list may appear to only apply to university libraries, the qualifier “public” suggests that the entire list applies only to the libraries of the other listed entities (school, church, museum, and more)); WIS. STAT. § 948.11(4)(b)(5) (2023) (exempting publicly funded libraries from prosecution for the crime of distributing harmful material to children).

create “adults only” sections where these materials are kept, but exempts public libraries from this requirement.²⁹⁴

Other states prohibit the production, possession, or distribution of obscene materials in general, but also create exceptions for libraries either through affirmative defenses or exemptions. These states include Idaho, Kansas, Louisiana, Massachusetts, Ohio, Pennsylvania, Wisconsin, and Wyoming.²⁹⁵

Indiana law prohibits the dissemination of imagery or videos of children who are nude or engaging in sexual conduct.²⁹⁶ These laws contain provisions exempting bona fide libraries and employees acting in their capacity as employees from the scope of these laws.²⁹⁷ Massachusetts’ law against dissemination of images of children who are nude or engaged in sexual conduct requires evidence of lascivious intent, and provides that dissemination of that material by a bona fide library “may be considered as evidence of a lack of lascivious intent.”²⁹⁸

2. Other Exemptions for Libraries

While most library defenses and exemptions concern harmful or obscene materials, there are a few other exemptions worth noting that do not fall neatly into that category. New York law prohibits the employment of children under the age of 16 years to act, model, play instruments, sing, or dance in connection with

294. CAL. PENAL CODE § 313.1(e) (West 2023).

295. IDAHO CODE §§ 18-4102, -4103 (2023) (exempting those employed by public libraries from the prohibition of distribution, publication, or exhibition of obscene materials); KAN. STAT. ANN. § 21-6401(a)–(c), (g)–(h)(2) (2023) (prohibiting the production, promotion, or possession of obscenity generally and to minors, but creating an affirmative defense for libraries and their officers and employees who act “in accordance with regular library policies approved by its governing body”); LA. STAT. ANN. § 14:106(A), (D) (2023) (stating prohibition on obscenity “do not apply to recognized and established . . . public libraries” and people acting in their capacity as library agents or employees); MASS. GEN. LAWS ch. 272, § 29 (2023) (creating a defense to the crime of disseminating obscene materials for libraries and their employees); OHIO REV. CODE ANN. § 2907.38(B), (C)(1) (West 2023) (prohibiting the display of videos depicting sexual conduct in viewing booths, but creating an affirmative defense for librarians disseminating the material “for a bona fide medical, scientific, educational, religious, governmental, judicial, or other proper purpose”); 18 PA. CONS. STAT. § 5903(a), (j) (2023) (exempting town, public, school, and university libraries and archives from the crime of displaying or disseminating obscene materials); WIS. STAT. § 944.21(3), (8)(b)(5) (2023) (exempting libraries that receive government from funding from prosecution for the possession, production, or distribution of obscene material); WYO. STAT. ANN. § 6-4-302(a), (c) (2023) (exempting bona fide “public library activities” from prosecution for promoting obscenity).

296. See IND. CODE §§ 35-42-4-4(b), -45-4-6(c) (2023).

297. *Id.* §§ 35-42-4-4(f), -45-4-6(d).

298. MASS. GEN. LAWS ch. 272, § 29B(b), (e) (2023).

making movies or radio and television broadcasts.²⁹⁹ But New York exempts “the performance of radio or television programs in cases where the child or children broadcasting do so from a school, church, academy, museum, library or other religious, civic or educational institution” where the performance is “of a nonprofessional character and occurs during hours when attendance for instruction is not required in accordance with the education law.”³⁰⁰

Texas is sensitive about its state seal—so much so that it prohibits the use of its state seal for commercial purposes and punishes violations of this prohibition as misdemeanors.³⁰¹ Texas’ restriction contains a partial exception for libraries, however, allowing “use of the state seal or a representation of the state seal in a library, museum, or educational facility incident to descriptions or exhibits relating to seals, coats of arms, heraldry, or this state.”³⁰²

III. THE FIRST AMENDMENT IMPLICATIONS OF LIBRARY CRIMES

With librarian immunity from obscenity laws in mind, I now turn to recent efforts to undermine these protections, as well as to restrict the carrying and distribution of certain disapproved materials in libraries around the country. Such restrictions pervade recent efforts to ban or restrict books deemed obscene or inappropriate for children—restrictions that often disproportionately target materials written by authors of color and LGBTQ+ authors.³⁰³ This Part begins by outlining how libraries and their activities implicate the First Amendment, how library crimes may implicate First Amendment protections, and how recent book bans may run afoul of the U.S. Constitution.

A. Libraries and First Amendment Rights

Thirty years ago, Rodney Smolla declared that “First Amendment principles are still in a relatively primitive state of development with regard to the freedom of libraries funded with public money.”³⁰⁴ To an extent, Smolla’s evaluation holds true, as the United States Supreme Court has not issued many decisions regarding

299. N.Y. ARTS & CULT. AFF. LAW § 35.01(1) (McKinney 2023).

300. *Id.* § 35.01(2).

301. TEX. BUS. & COM. CODE ANN. § 17.08(a), (c), (i) (West 2023).

302. *Id.* § 17.08(a)(1)(D).

303. *See infra* Part III.C.1.

304. Rodney A. Smolla, *Freedom of Speech for Libraries and Librarians*, 85 LAW LIBR. J. 71, 73 (1993).

the scope of First Amendment rights in the library context.³⁰⁵ But the decisions the Court has issued provide some guidance, as do opinions of lower courts.³⁰⁶

The First Amendment is implicated in a number of library scenarios. This Article will take a focused approach and address courts' First Amendment reasoning when those who disrupt or break library rules are disciplined, the First Amendment implications of restricting sex offenders, and the First Amendment implications of book selection or removal.

In *Board of Education v. Pico*, the United States Supreme Court addressed a First Amendment challenge arising from the removal of books from a public school library following protests by a “politically conservative organization of parents.”³⁰⁷ Justice William Brennan Jr, joined by Justices Thurgood Marshall and John Paul Stevens, recognized a First Amendment right “to receive information and ideas,” arguing that this right was “an inherent corollary of the rights of free speech and press.”³⁰⁸ Justice Brennan went on to note that “[a] school library, no less than any other public library, is ‘a place dedicated to quiet, to knowledge, and to beauty’” and emphasized the library’s role in giving students the ability to engage in flexible investigation beyond the lessons of the classroom.³⁰⁹ Justice Harry Blackmun concurred in part and concurred in the judgment, relying on a principle “both narrower and more basic than the ‘right to receive information’ identified by the plurality,” as Justice Blackmun concluded that the State had no “affirmative obligation to provide students with information or ideas.”³¹⁰ Instead, Justice Blackmun concluded that “certain forms of state discrimination *between* ideas are improper” and that the State could not “deny access to an idea simply because state officials disapprove of that idea for partisan or political reasons.”³¹¹ This principle, Justice Blackmun emphasized, was a narrow one—as schools needed to be able to “choose one book over another, without outside interference,” in ensuring that books relevant to the curriculum are available or for a “host of other politically neutral reasons.”³¹² Justice Blackmun joined with Justices Brennan, Marshall, and Stevens, however, concluded that the school was not entitled to judgment as a matter of law because the evidence presented did “not foreclose the possibility that [the district’s] decision to remove the books rested

305. *See infra* Part III.A.

306. *See infra* Part III.A.

307. 457 U.S. 853, 856–57 (1982) (plurality opinion).

308. *Id.* at 867 (quoting *Stanley v. Georgia*, 394 U.S. 557, 564 (1969)).

309. *Id.* at 868–69 (quoting *Brown v. Louisiana*, 383 U.S. 131, 142 (1966)).

310. *Id.* at 875, 878 (Blackmun, J., concurring in part and concurring in judgment).

311. *Id.* at 878–79.

312. *Id.* at 880.

decisively upon disagreement with constitutionally protected ideas in those books, or upon a desire on petitioners' part to impose upon the students of Island Trees High School and Junior High School a political orthodoxy to which petitioners and their constituents adhered."³¹³

Justice Byron White concurred in the judgment, arguing that there was no need to "issue a dissertation on the extent to which the First Amendment limits the discretion of the school board to remove books from the school library."³¹⁴ Instead, Justice White concluded that the Court should remand the case to refine the facts and see whether a First Amendment determination was necessary at all.³¹⁵

From this fractured opinion, lower courts have elaborated on First Amendment rights in the library context.³¹⁶ A central case of particular relevance to adverse state action against individuals for disrupting libraries or otherwise acting contrary to library rules is *Kreimer v. Bureau of Police for the Town of Morristown*.³¹⁷ There, a library enacted rules that patrons must "be engaged in activities associated with the use of a public library[,]" restricting patrons from "harass[ing] or annoy[ing] others through noisy or boisterous activities," and stating that "[p]atrons whose bodily hygiene is offensive so as to constitute a nuisance to other persons shall be required to leave the building."³¹⁸ The plaintiff argued that his First Amendment and Fourteenth Amendment rights were violated when he was expelled from the library for failing to follow the rules.³¹⁹

The Third Circuit recognized a First Amendment "positive right of public access to information and ideas" drawing on *Pico* and other Supreme Court precedent.³²⁰ But while First Amendment interests were implicated, this was "simply the threshold" of the analysis, as the speech took place on government property—requiring a determination of the nature of the forum in which the speech took place.³²¹ The court held that, in contrast to traditional public fora which have always been devoted to assembly and debate, and where speech rights are at their maximum, the library was a "limited public forum"—a place in which the

313. *Id.* at 875 (plurality opinion); *see id.* at 879–80 (Blackmun, J., concurring in part and concurring in judgment).

314. *Id.* at 883 (White, J., concurring in judgment).

315. *Id.* at 883–84.

316. *See, e.g., Kreimer v. Bureau of Police*, 958 F.2d 1242 (3d Cir. 1992).

317. *Id.*

318. *Id.* at 1248, 1262.

319. *Id.* at 1249.

320. *Id.* at 1255.

321. *Id.*

government permitted speech of a certain sort.³²² Specifically, the library was “open to the public only for specified purposes: reading, studying, [and] using the Library materials[,]” not for “the exercise of all First Amendment activities.”³²³ Activities that limited conduct contrary to these purposes were subject to a relaxed level of review—restrictions only needed to be “reasonable and not an effort to suppress expression because public officials oppose the speaker’s view.”³²⁴

With this background in mind, the court upheld the challenged library rules.³²⁵ The rule requiring patrons to engage in “activities associated with the use of a public library while in the building” by definition prohibited activities “beyond the purpose for which the Library was opened[,]” and therefore, met a relatively relaxed “reasonableness” standard.³²⁶ Similarly, the library rule prohibiting harassment and noisy, boisterous activities targeted “behavior that tends to or is disruptive in a library setting” and was “fundamentally reasonable.”³²⁷

The library’s hygiene restriction, however, faced tougher scrutiny, as it “would require the expulsion of a patron who might otherwise be peacefully engaged in permissible First Amendment activities within” the library.³²⁸ Accordingly, the court required a determination of whether the rule was “narrowly tailored to serve a significant government interest and whether it leaves ample alternative channels of communication.”³²⁹ The court concluded that the rule withstood this scrutiny—finding that it was narrowly tailored and concluding that so long as patrons could be permitted to return, expelling them for hygiene violations left open sufficient alternative channels of communication.³³⁰ The court also rejected claims that the library rules were unconstitutionally vague, finding that an objective determination of whether conduct was “annoying” was required and concluding that the hygiene rule’s reference to “nuisance” was only as vague as necessary to encompass the unlimited potential factual circumstances that could give rise to objectively annoying conduct.³³¹

Other cases reflect a similar approach. Discipline resulting from behavior that undermines typical library functions in a manner contrary to clearly defined

322. *Id.* at 1258–60.

323. *Id.* at 1260.

324. *Id.* at 1262 (quoting *United States v. Kokinda*, 497 U.S. 720, 730 (1990)).

325. *See id.* at 1270–71.

326. *Id.* at 1262.

327. *Id.* at 1262–63.

328. *Id.* at 1264.

329. *Id.*

330. *Id.*

331. *Id.* at 1268.

rules tends to be upheld against First Amendment challenges by courts evaluating whether the behavior meets a relatively permissive, “reasonableness” standard.³³² Where people are excluded or disciplined based on reasons other than misusing the library—most typically in cases involving rules over hygiene—courts tend to apply heightened standards of review that are harder (but not impossible) for libraries to meet.³³³ Policies that are worded broadly or vaguely, however, are likely to run afoul of First Amendment protections.³³⁴

B. Library Crimes and the First Amendment

Many of the criminal laws surveyed above have not been the subject of First Amendment challenges—at least not in any reported cases.³³⁵ This is not particularly surprising, given the Supreme Court’s dearth of library case law, its fragmented reasoning in *Pico*, and the permissive law that has developed in the lower courts.³³⁶ The determination that libraries are a limited public forum gives libraries a fair amount of leeway in prohibiting conduct that is disruptive or that otherwise interferes with the standard uses of libraries for “reading, studying, [and] using the Library materials.”³³⁷ Because discipline regarding conduct in libraries is subject to lesser First Amendment scrutiny than restrictions regarding hygiene

332. *See, e.g.*, *Grant-Davis v. Bd. of Trs.*, No. 2:15-cv-2676-PMD-MGB, 2017 WL 9360875, at *23–24 (D.S.C. May 24, 2017) (upholding the library’s expulsion of plaintiff for disruptive behavior using a reasonableness standard of review); *Hill v. Derrick*, No. 4:05-CV-1229, 2006 WL 1620226, at *6–7 (M.D. Pa. June 8, 2006) (upholding rule prohibiting corporal punishment or physical abuse by patrons against First Amendment challenge).

333. *See, e.g.*, *Neinast v. Bd. of Trs.*, 346 F.3d 585, 593–95 (6th Cir. 2003) (holding that library’s requirement that patrons wear shoes was narrowly tailored to accomplish interest of protecting patrons from hazards to feet in library environment); *Lu v. Hulme*, 133 F. Supp. 3d 312, 327 (D. Mass. 2015) (recognizing the difference between hygiene rules and removal of patrons for misusing the library, noting that rules over conduct and misuse of libraries are subject to lesser scrutiny because they “only prohibit conduct that goes beyond the First Amendment purposes to which a public library is dedicated”).

334. *See, e.g.*, *Armstrong v. D.C. Pub. Libr.*, 154 F. Supp. 2d 67, 77–79 (D.D.C. 2001) (finding that library policy barring “patrons based on ‘objectionable’ appearance” was unconstitutionally vague and overbroad).

335. *See, e.g.*, *Grant-Davis*, 2017 WL 9360875, at *23–24 (upholding the library’s expulsion of plaintiff for disruptive behavior using a reasonableness standard of review); *Hill*, 2006 WL 1620226, at *6–7 (upholding rule prohibiting corporal punishment or physical abuse by patrons against First Amendment challenge).

336. *See generally* *Bd. of Educ. v. Pico*, 457 U.S. 853 (1982) (plurality opinion).

337. *See Kreimer v. Bureau of Police*, 958 F.2d 1242, 1260–62 (3d Cir. 1992).

or status, many library crimes based on defined instances of conduct that disrupt library functions are likely to withstand First Amendment challenges.³³⁸

The most common library crimes—library theft, destruction of library materials and property, and failure to return materials—are all examples of prohibited conduct that runs contrary to the functions of a library.³³⁹ As courts tend to see things, libraries are for reading and checking out materials, finding information, and engaging in study and contemplation.³⁴⁰ Actions that destroy these materials or that make them harder to come by for the rest of the community run directly contrary to these goals.³⁴¹ Accordingly, these library crimes are likely to face a relatively low level of scrutiny that requires states to demonstrate that their library crimes are reasonable and unrelated to an effort to suppress viewpoints with which government officials disagree.³⁴²

Most library crimes are likely to meet this relaxed standard of First Amendment review. Theft, destruction, and failure to return laws do not differentiate based on the content of the materials at issue—much less the viewpoints expressed by the authors of those materials.³⁴³ Where there is differentiation in the severity of punishments, that differentiation is typically tied to the value of materials at issue.³⁴⁴ Stealing, destroying, or withholding values past a certain value threshold may lead from fines to jail to prison to quite a few years in prison.³⁴⁵ But because this differentiation is not based on conduct, it does not implicate the viewpoint discrimination that *Kreimer* and (most of) *Pico* flagged as potential bases for a successful First Amendment challenge.³⁴⁶

This is not to say that all library crimes are likely to evade First Amendment scrutiny.³⁴⁷ Book bans that rely on criminal penalties are certainly relevant to this discussion and will be addressed at length next.³⁴⁸ And excluding sex offenders from libraries is a policy that may be vulnerable to First Amendment challenges if

338. See *Lu*, 133 F. Supp. 3d at 326–27 (noting the different levels of scrutiny applied to library policies targeting misuse of library facilities and other rules such as those restricting people based on hygiene).

339. See *supra* Parts II.A, II.B, II.C.

340. *Lu*, 133 F. Supp. 3d. at 328.

341. *Kreimer*, 958 F.2d at 1262.

342. See *id.*

343. See *supra* Parts II.A, II.B, II.C.

344. See statutes cited *infra* note 439.

345. See statutes cited *infra* note 439.

346. See *Kreimer*, 958 F.2d at 1262; *Bd. of Educ. v. Pico*, 457 U.S. 853, 875 (1982).

347. See, e.g., *Doe v. City of Albuquerque*, 667 F.3d 1111 (10th Cir. 2012).

348. See *infra* Part III.C.

the restriction is too broad.³⁴⁹ In *Doe v. City of Albuquerque*, for example, the city passed a broad ban that prohibited all registered sex offenders from entering public libraries.³⁵⁰ The Tenth Circuit Court of Appeals struck down the ban, finding that it was not narrowly tailored to meet the interest of patron safety.³⁵¹ The court did not dispute the notion that sex offenders “statistically have a significant rate of recidivism and therefore may present a risk of danger to those around them[,]” but noted that the “critical question” was whether the law burdened substantially more speech than necessary to achieve the government’s safety interest.³⁵² The court concluded that the law was overly burdensome, noting that the law could be further narrowed to provide restricted hours when sex offenders could use the libraries, designating certain areas of libraries for use by sex offenders, or requiring sex offenders to check in when using the library.³⁵³

Questions therefore remain over the statewide sex offender restrictions discussed above. Those laws are narrower than the Albuquerque ordinance that was struck down.³⁵⁴ Most of them apply only to those sex offenders whose victims were minors—or even a particularly young subset of minors.³⁵⁵ Louisiana’s law is not just limited to offenders whose victims were younger than thirteen, but also requires libraries to develop policies for admitting sex offenders which, if met, would allow sex offenders to use public libraries.³⁵⁶ Narrowing measures like this gives the state a stronger case that their restrictions are narrowly tailored, increasing the chances of success against First Amendment challenges.

States that may remain vulnerable include North Carolina, which only narrows its sex offender ban by specifying those offenders whose victims were minors.³⁵⁷ This does not include any of the potential narrowing measures the Tenth

349. *See, e.g., Doe*, 667 F.3d at 1116.

350. *Id.*

351. *Id.* at 1132–34.

352. *Id.* at 1134. While the court did not question the broad notion that sex offenders, as a monolithic class, are likely to reoffend, there are questions as to whether such an assumption is warranted in light of the array of offenses and types of offenders who may be required to register, and misconceptions about recidivism rates even for those who are convicted of more severe sexual offenses. *See* GOTTSCHALK, *supra* note 191, at 210–11.

353. *Doe*, 667 F.3d at 1134.

354. *See id.*

355. *See, e.g.*, N.C. GEN. STAT. § 14-208.18(a)(3), (c) (2023) (restricting application to sex offenders whose victims were minors); LA. STAT. ANN. § 14:91.2(A) (2023) (restricting application to sex offenders whose victims were under the age of 13).

356. *See* LA. STAT. ANN. § 14:91.2(D) (2023).

357. *See* N.C. GEN. STAT. § 14-208.18(a)(3), (c) (2023).

Circuit identified in striking down Albuquerque's ban, nor does it include avenues for sex offenders to become eligible to use libraries like those provided under Louisiana law.³⁵⁸ North Carolina therefore faces a tougher challenge in proving that its law is narrowly tailored.³⁵⁹

South Dakota's law regarding sex offenders' use of libraries may also be vulnerable.³⁶⁰ South Dakota bans sex offenders from "loitering" at libraries.³⁶¹ To "loiter" is defined as "to remain for a period of time and under circumstances that a reasonable person would determine is for the primary purpose of observing or contacting minors."³⁶² South Dakota's Supreme Court upheld the loitering restriction in a case where a defendant circled a park for about 20 minutes in his vehicle and then parked near the park.³⁶³ The court concluded that the law was not unconstitutionally vague, noting it was limited to sex offenders, that the "community safety zone" defined in the statute was precisely defined, and stating that the law required "that the loitering be 'for the primary purpose of observing or contacting minors.'"³⁶⁴

Would this reasoning stand up in a First Amendment vagueness challenge in the library context? First Amendment scrutiny may be heightened given the recognized First Amendment interests in obtaining information from libraries—an interest that is not in play where the area at issue is a public park.³⁶⁵ And claiming that loitering requires a "primary purpose" of contacting minors may not be the most accurate characterization—as the definition is based on the conclusions a third-party observer may reach about what a person is doing, rather than a finding that the loitering defendant has a specific intent of contacting minors.³⁶⁶

358. See *Doe*, 667 F.3d at 1134; LA. STAT. ANN. § 14:91.2(D) (2023).

359. See N.C. GEN. STAT. § 14-208.18(a)(3), (c) (2023).

360. See S.D. CODIFIED LAWS § 22-24B-24 (2023).

361. *Id.*

362. *Id.* § 22-24B-22.

363. See *State v. Stark*, 802 N.W.2d 165, 167–68, 171 (S.D. 2011).

364. *Id.* at 171 (quoting S.D. CODIFIED LAWS § 22-24B-22 (2023)).

365. See *Kreimer v. Bureau of Police*, 958 F.2d 1242, 1255 (3d Cir. 1992) (noting there is a First Amendment right of "public access to information and ideas").

366. See *Stark*, 802 N.W.2d at 172–73.

C. Library Book Bans—an Ongoing Issue

1. The Present Landscape of Library Book Bans

In 2022 and 2023, this country saw a rise in state legislation restricting and banning books from schools and public libraries.³⁶⁷ As a result, states saw a spike in books being pulled from school libraries, with books written by “people of color and LGBTQ individuals” making up a large portion of books removed.³⁶⁸ Demands for removing books from libraries are split between school libraries and public libraries.³⁶⁹ In 2022, “[of] the reported book challenges, 58% targeted books and materials in school libraries, classroom libraries or school curricula.”³⁷⁰ Challenges to books in public libraries made up 41 percent of these reported challenges.³⁷¹ These bans are relevant to this Article because they frequently interact with criminal law provisions, provide for criminal penalties, or remove defenses and exemptions for otherwise unlawful conduct related to distributing obscene or harmful materials.³⁷²

As discussed above, many states have broad prohibitions on the distribution or display of obscene materials and materials that are harmful to minors.³⁷³ Several of these laws include carveouts for libraries by either exempting libraries and their employees from prosecution, or creating an affirmative defense that one was a library officer or employee acting in the course of one’s official employment.³⁷⁴ As outcry over purportedly obscene and inappropriate material continues to rise, several states have considered or passed legislation that eliminates these library exceptions.

367. Alexandra E. Petri, *Book Bans Are on the Rise in U.S. Schools, Fueled by New Laws in Republican-Led States*, L.A. TIMES (Apr. 22, 2023, 5:00 AM), <https://www.latimes.com/world-nation/story/2023-04-22/book-bans-soaring-schools-new-laws-republican-states> [https://perma.cc/Y6HC-QM8Z].

368. *Id.*

369. Raymond Garcia, *Book Challenges Nearly Doubled from 2021*, ALA NEWS (Mar. 22, 2023), <https://www.ala.org/news/press-releases/2023/03/record-book-bans-2022> [https://perma.cc/5KWZ-XFP7].

370. *Id.*

371. *Id.*

372. See Hannah Natanson, *School Librarians Face a New Penalty in the Banned-Book Wars: Prison*, THE WASH. POST (May 18, 2023, 6:00 AM), <https://www.washingtonpost.com/education/2023/05/18/school-librarians-jailed-banned-books/> [https://perma.cc/B46U-V5UG].

373. See *supra* Part II.A.

374. See *supra* Part II.A.1.

Arkansas is one such state.³⁷⁵ In summer 2023, Arkansas passed a law that, among other things, eliminated Arkansas' library exemption in its obscenity law, added "loans at a library" to the means by which one may violate Arkansas' law against distributing obscene materials, and established a new crime of "[f]urnishing a harmful item to a minor," which lacked a library exemption.³⁷⁶ Preexisting law defines "obscene" to mean "that to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interest."³⁷⁷ Distributing material harmful to a minor is a Class A misdemeanor and distributing obscene materials is a Class D felony.³⁷⁸

States have also passed laws restricting what books may be included in school libraries. In 2022, Missouri passed legislation creating the crime of providing explicit sexual material to a student.³⁷⁹ The law prohibits providing or loaning "explicit sexual material" to students at public and private elementary and secondary schools, making it a Class A misdemeanor to do so.³⁸⁰ "Explicit sexual material" is defined to mean:

any pictorial, three-dimensional, or visual depiction, including any photography, film, video, picture, or computer-generated image, showing human masturbation, deviate sexual intercourse as defined in section 566.010, sexual intercourse, direct physical stimulation of genitals, sadomasochistic abuse, or emphasizing the depiction of postpubertal human genitals; provided, however, that works of art, when taken as a whole, that have serious artistic significance, or works of anthropological significance, or materials used in science courses, including but not limited to materials used in biology,

375. See ARK. CODE ANN. § 5-68-403(2) (2023).

376. See Elizabeth A. Harris & Alexandra Alter, *Group Challenges Arkansas Law That Would Criminalize Access to Some Books*, N.Y. TIMES, <https://www.nytimes.com/2023/06/02/books/arkansas-book-banning-law-lawsuit.html> [https://perma.cc/VNY3-39P2] (June 13, 2023); S. 81, 94th Gen. Assemb., Reg. Sess. (Ark. 2023), <https://www.arkleg.state.ar.us/Home/FTPDocument?path=%2FACTS%2F2023R%2FPublic%2FACT372.pdf> [https://perma.cc/97CS-BCPY].

377. ARK. CODE ANN. § 5-68-403(2) (2023).

378. See S. 81, 94th Gen. Assemb., Reg. Sess. (Ark. 2023), <https://www.arkleg.state.ar.us/Home/FTPDocument?path=%2FACTS%2F2023R%2FPublic%2FACT372.pdf> [https://perma.cc/97CS-BCPY].

379. See Jodi Fortino & Kate Grumke, *ACLU Sues Missouri Over Book Ban Law That Pushed School Libraries to Remove Hundreds of Titles*, NPR (Feb. 23, 2023, 4:47 PM) <https://www.kcur.org/news/2023-02-23/aclu-sues-missouri-over-book-ban-law-that-pushed-school-libraries-to-remove-hundreds-of-titles> [https://perma.cc/NX4K-XCR4].

380. MO. REV. STAT. § 573.550(1), (2) (2023).

anatomy, physiology, and sexual education classes shall not be deemed to be within the foregoing definition.³⁸¹

This law is limited to pictures and visual representations of sexual content only, but this has still raised concerns of librarians now subject to the law.³⁸² Out of concern over where the line for permissible, educational material will be drawn, schools have removed numerous books—more than half of which “were written by or about LGBTQ people or people of color.”³⁸³

Indiana recently passed a law eliminating primary and secondary school libraries’ exemption from prosecution for the distribution of material harmful to minors—restricting the exemption to college and university libraries only.³⁸⁴ As a result, it is now a felony if school librarians lend materials that are “harmful to minors,” a term that applies to material that: “(1) describes or represents . . . nudity, sexual conduct, sexual excitement, or sado-masochistic abuse”; (2) as a whole, appeals to “the prurient interest in sex of minors”; (3) is “patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable matter for or performance before minors”; and (4) as a whole lacks “serious literary, artistic, political, or scientific value for minors.”³⁸⁵

In January 2022, House Bill 1467 was introduced in Florida’s legislature.³⁸⁶ The bill added Section 1006.28 to the Florida Statutes, which requires that:

[e]ach book made available to students through a school district library media center or included in a recommended or assigned school or grade-level reading list must be selected by a school district employee who holds a valid educational media specialist certificate, regardless of whether the book is purchased, donated, or otherwise made available to students.³⁸⁷

Schools are also required to publish lists of all materials in the school’s library or on their reading list and are required to make available any material or book in their library for review upon written request.³⁸⁸ Books must also “meet the criteria in s. 1006.40(3)(d),” which, in turn, requires that materials be “[f]ree of

381. *Id.* § 573.550.

382. *See* Fortino & Grumke, *supra* note 379.

383. *Id.*

384. H.R. 1447, 123d Gen. Assemb., 1st Reg. Sess. (Ind. 2023) (enacted); IND. CODE § 35-49-3-4(a)(2) (effective Jan. 1, 2024).

385. IND. CODE § 35-49-2-2 (2023) (defining “harmful to minors”).

386. *See* H.R. 1467, Gen. Assemb., Reg. Sess. (Fla. 2022).

387. FLA. STAT. § 1006.28(d)(1) (2023).

388. *Id.* § 1006.28(d)(2)(3).

pornography and material prohibited under s. 847.012” and that materials be “[s]uited to student needs and their ability to comprehend the material presented” as well as appropriate for students’ grade levels and age groups.³⁸⁹ Section 847.012 is Florida’s law prohibiting distribution of obscene materials to children, and prohibits the distribution of materials depicting nudity and other sexual content which is “harmful to minors.”³⁹⁰ “Harmful to minors,” in turn, is defined as material “depicting nudity, sexual conduct, or sexual excitement” that “[p]redominantly appeals to a prurient, shameful, or morbid interest[,]” is “patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material or conduct for minors[,]” and “[t]aken as a whole, is without serious literary, artistic, political, or scientific value for minors.”³⁹¹

Penalties for violations of these laws are unclear. News reports suggest that the Florida Department of Education is taking the position that violating the law is a third degree felony.³⁹² But House Bill 1467 contains no language regarding punishments, nor does Florida Statutes Section 1006.28 where much of the law is codified.³⁹³ It appears that concerns over felonies arise from the law’s requirement that school books comply with Section 1006.40(3)(d), which in turn, restricts material prohibited under section 847.012—Florida’s law banning distribution of material harmful to minors, which carries third-degree felony penalties.³⁹⁴ Because of this, it does not appear that simply any violation of the myriad review, disclosure, or complaint procedure requirements enacted as a result of House Bill 1467 will result in felony penalties—only those instances that constitute separate violations of Florida’s law against distribution of material harmful to minors.³⁹⁵

389. *Id.* §§ 1006.28(d)(2)(3), .40(3)(c).

390. *Id.* § 847.012(3).

391. *Id.* § 847.001(7).

392. Kerry Sheridan, *Students Push Back Against Book Bans as the Scope of a New Florida Law Expands*, WUSF (Mar. 6, 2023, 5:00 AM), <https://wusfnews.wusf.usf.edu/education/2023-03-06/students-push-back-book-bans-scope-new-florida-law-expands> [<https://perma.cc/NY7Y-AAMM>].

393. *See* H.R. 1467, Gen. Assemb., Reg. Sess. (Fla. 2022); FLA. STAT. § 1006.28 (2023).

394. *See* FLA. STAT. §§ 847.012(6), 1006.28(d)(2)(a), .40(3)(c) (2023); *see also* Sheridan, *supra* note 392 (including an image of a slide distributed by the Florida Department of Education which cites Section 847.012 as setting forth penalties for violations of H.R. 1467).

395. *Contra* Rich Donnelly, *Yes, Florida Teachers Could Face Third-Degree Felony for Using Books, Literature in Classroom Not Approved by State*, FIRST COAST NEWS, <https://www.firstcoastnews.com/article/news/verify/florida-teacher-could-face-a-third-degree-felony-for-using-books-literature-in-class-not-approved-by-state/77-9f5a087f-8dcd-4a99-afe1-c9c23b6201cd> [<https://perma.cc/JTJ4-JLTD>] (Feb. 3, 2023, 4:25 PM) (asserting that teachers commit a third-degree felony by having “books and literature about certain topics in their classroom” and citing Florida Statutes Section 847.012 as the basis for this assertion).

Still, Florida's book restrictions—particularly the requirements that all books be reviewed by those with the proper training and certification—have led to multiple instances of teachers pulling books from their classrooms out of concerns that they had not been sufficiently vetted for compliance.³⁹⁶ School districts appear to be informing teachers that any violation of the new laws “could be considered a third-degree felony,” resulting in fear and confusion among affected teachers.³⁹⁷ These assertions suggest that violation of any of the provisions of House Bill 1467 may result in felony penalties—assertions that are potentially misleading for reasons set forth above—which, nevertheless, are likely to prompt overreactions by teachers in an attempt to avoid even the possibility of criminal penalties.³⁹⁸

2. *The Constitutional Implications of Library Book Bans*

Criminal laws prohibiting libraries and their employees from lending obscene or harmful materials may run into constitutional trouble if they rely on definitions of “obscenity” that go beyond the Supreme Court's definition of the term.³⁹⁹ Government restrictions based on the content of speech are generally subject to strict scrutiny, but there are several categories of speech where courts permit far more regulation, which include defamation, obscenity, true threats, and incitement.⁴⁰⁰ In *Miller v. California*, the Supreme Court set out the “basic guidelines” for defining obscenity:

- (a) whether ‘the average person, applying contemporary community standards’ would find that the work, taken as a whole, appeals to the prurient interest . . . ;
- (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and
- (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.⁴⁰¹

396. See *Florida Classroom Bookshelves Left Empty as Education Reform Law Goes into Effect*, CBS NEWS (Feb. 18, 2023, 11:51 AM), <https://www.cbsnews.com/news/florida-jacksonville-classroom-bookshelves-ron-desantis-house-bill-1467/> [<https://perma.cc/W759-GS4U>].

397. Leyla Santiago & Jack Forrest, *Florida School District Begins ‘Cataloging’ Books to Comply with DeSantis-Backed Law*, CNN POLITICS (Jan. 25, 2023, 10:19 PM), <https://www.cnn.com/2023/01/25/politics/florida-school-library-books-law-desantis/index.html> [<https://perma.cc/K49L-9PJJ>].

398. See *id.*

399. See *Miller v. California*, 413 U.S. 15, 24 (1973).

400. See *United States v. Stevens*, 559 U.S. 460, 467–69 (2010).

401. *Miller*, 413 U.S. at 24 (internal citations omitted).

Even if a law targets unprotected speech, it may run afoul of the First Amendment if it does so in a selective manner.⁴⁰² In *R.A.V. v. City of St. Paul*, the Supreme Court overturned a conviction arising from an instance of cross burning, holding that the ordinance under which the defendant was prosecuted, which prohibited the use of symbols or graffiti in a manner that aroused “anger, alarm or resentment in others or . . . on the basis of race, color, creed, religion or gender[,]” was unconstitutional viewpoint discrimination.⁴⁰³ Even if the prohibited speech was unprotected fighting words, the singling out of speech that sent a particular message was impermissible.⁴⁰⁴

This bar against viewpoint discrimination likely applies to laws and other government actions that remove or restrict certain materials in libraries.⁴⁰⁵ Four Justices in *Pico* were willing to sign off on a constitutional prohibition against libraries removing materials in a manner that imposes a political orthodoxy on those patronizing libraries.⁴⁰⁶ And all of the dissenting Justices joined (or effectively joined) Justice William Rehnquist’s dissent in which he “cheerfully concede[d]” that libraries may not remove materials in a “narrowly partisan or political manner” that targets books written by authors of particular political parties, races, or those materials advocating “racial equality and integration.”⁴⁰⁷

Applying these points of First Amendment doctrine to states’ recent book ban statutes, there appear to be some potential vulnerabilities.⁴⁰⁸ Arkansas’ ban on distribution of obscene materials relies on a definition of “obscene” that covers materials “that to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interest.”⁴⁰⁹ This is an overbroad definition of obscenity, as the Supreme Court also requires consideration of whether the material “depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law,” and, perhaps more importantly, “whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.”⁴¹⁰ By excluding these additional

402. See *R.A.V. v. City of St. Paul*, 505 U.S. 377, 391–92 (1992).

403. *Id.* at 379–80, 391–93.

404. *Id.* at 386.

405. See, e.g., *Bd. of Educ. v. Pico*, 457 U.S. 853 (1982) (plurality opinion).

406. *Id.* at 872, 875 (plurality opinion).

407. *Id.* at 907 (Rehnquist, J., dissenting) (internal quotations omitted). Justice Sandra Day O’Connor did not sign Rehnquist’s dissenting opinion, but instead wrote a two-paragraph dissent noting that while she did not personally agree with the school board’s actions, she joined Rehnquist’s dissent. *Id.* at 921 (O’Connor, J., dissenting).

408. See *Miller v. California*, 413 U.S. 15, 23–24 (1973).

409. ARK. CODE ANN. § 5-68-403(2) (2023).

410. See *Miller*, 413 U.S. at 24.

requirements from its definition of obscenity, Arkansas' obscenity law covers protected, as well as unprotected speech, rendering it vulnerable to a First Amendment attack.⁴¹¹

And even for those laws that track the Court's language defining obscenity, challenges may still arise as they are enforced. Ari Ezra Waldman argues that LGBTQ+ content tends to be treated as "inherently sexual in a way that heteronormative conduct is not," a tendency which, in practice, may result in book ban statutes being enforced and applied in a viewpoint-discriminatory manner.⁴¹² Recall Missouri's ban, which has resulted in the removal of books that are mostly written by or for LGBTQ+ individuals and people of color.⁴¹³ This trend may support an argument that Missouri's book ban, in practice, engages in viewpoint discrimination.

To be sure, First Amendment rules regarding what libraries may and may not remove are far from certain.⁴¹⁴ *Pico* is an old decision, and its reasoning is split across three separate opinions.⁴¹⁵ Only a plurality of Justices signed on to the conclusion that libraries cannot prohibit books in a manner that imposes an official orthodoxy.⁴¹⁶ And even fewer Justices recognized an explicit First Amendment right to receive information by library patrons.⁴¹⁷

Still, the avenues *Pico* opens for potential challenges may leave room for litigation strategies that deter the selective removal and banning of materials.⁴¹⁸ As discussed above, *Pico*'s plurality and dissenters were both willing to recognize a constitutional prohibition against removing books based on a particular partisan viewpoint, political message, or the fact that the books' authors are racial minorities.⁴¹⁹ Even Justice White's concurrence in the judgment emphasized the need for further discovery regarding the precise motivations of those responsible

411. See ARK. CODE ANN. § 5-68-403(2) (2023); *Miller*, 413 U.S. at 23–24.

412. Ari Ezra Waldman, *Disorderly Content*, 97 WASH. L. REV. 907, 910, 934–35 (2022); see also Jennifer Minear, Note, *Performance and Politics: An Argument for Expanded First Amendment Protection of Homosexual Expression*, 10 CORNELL J.L. & PUB. POL'Y 601, 608 (2001).

413. Fortino & Grumke, *supra* note 379.

414. See, e.g., *Bd. of Educ. v. Pico*, 457 U.S. 853, 855–75 (1982) (plurality opinion).

415. See *id.* at 875 (plurality opinion); *id.* at 875 (Blackmun, J., dissenting in part and concurring in judgment); *id.* at 883 (White, J., concurring).

416. See *Pico*, 457 U.S. at 885–86.

417. See *id.* at 867.

418. See *id.* at 875.

419. *Id.* at 872, 875 (plurality); *id.* at 907 (Rehnquist, J., dissenting).

for removing library materials.⁴²⁰ Litigation challenging removal of library materials that is tailored to get to the heart of these motivations may require discovery directed to those responsible for the decision and, where those individuals end up being library board members or other officials, these people may soon find themselves producing communications and documents and forced into depositions. This may be an unpleasant enough prospect to deter the removal of materials in the first place, regardless of the vagaries and uncertainties of the applicable First Amendment doctrine.

First Amendment challenges may not be the only way to push back against library book bans. Illinois, for example, passed House Bill 2789 in 2023 which codified language prohibiting the banning of books based on “partisan or doctrinal disapproval,” conditioning eligibility for state funding on complying with this prohibition.⁴²¹ The bill also requires the State Librarian and the Illinois State Library to either adopt the American Library Association’s Library Bill of Rights and its indication that “materials should not be proscribed or removed because of partisan or doctrinal disapproval or,” in the alternative, for the State Librarian and State Library to adopt a statement that “prohibit[s] the practice of banning books or others materials within the library or library system.”⁴²²

IV. LIBRARY CRIME, MASS INCARCERATION, AND OVERCRIMINALIZATION

A. *Overcriminalization and Mass Incarceration: A Brief Background*

Overcriminalization and mass incarceration—two complex notions that sometimes overlap, sometimes conflict, and may be uneasily combined into the notion of “mass criminalization” are key topics in discussions of criminal law and reform.⁴²³ Millions of people are incarcerated in jails or prisons, and millions more are subject to “some form of state control,” such as probation and parole.⁴²⁴ Despite falling crime rates, the number of criminal cases filed has increased, with

420. *Id.* at 884 (White, J., concurring in judgment).

421. *See* H.R. 2789, 103d Gen. Assemb., Reg. Sess. (Ill. 2023) (codified at 75 ILL. COMP. STAT. 10/8.7 (2023)).

422. *See id.*

423. *See* Benjamin Levin, *The Consensus Myth in Criminal Justice Reform*, 117 MICH. L. REV. 259, 302–08 (2018) (describing “mass criminalization” and how it relates to and is distinct from notions of mass incarceration and overcriminalization).

424. GOTTSCHALK, *supra* note 191, at 1 (noting that 2.2 million people are incarcerated in jail or prison, and another eight million under other forms of state control).

correspondingly high rates of incarceration.⁴²⁵ A number of scholars argue that harsh sentencing laws and guidelines contribute to mass incarceration.⁴²⁶ But the issue is not just heavy sentences; millions of misdemeanors cases are filed each year, which contributes to the ongoing phenomenon of mass incarceration.⁴²⁷

The impacts of mass incarceration are not uniform. Those who tend to be arrested, prosecuted, and incarcerated tend to be people of color, those who are less educated, poor people, and those located in economically distressed communities.⁴²⁸ As discussed in greater detail below, these communities are reflected in those who patronize libraries; particularly those who seek out libraries for services beyond locating and checking out a book.⁴²⁹

B. *The Role of Library Crime*

What does library crime have to do with overcriminalization and mass incarceration? When it comes to assigning blame for mass incarceration, there are a number of different arguments, theories, and advocacy strategies; the lines of which may become blurred.⁴³⁰ Todd Clear and James Austin state that the “size of a prison population is completely determined by two factors: *how many people go to prison* and *how long they stay*.”⁴³¹ With these factors as a backdrop, the number

425. See JOHN F. PFAFF, LOCKED IN: THE TRUE CAUSES OF MASS INCARCERATION—AND HOW TO ACHIEVE REAL REFORM 71–73 (Basic Books 2017) (describing crime, filing, and incarceration trends between 1994 and 2008); Katherine Beckett & Lindsey Beach, *The Place of Punishment in Twenty-First-Century America: Understanding the Persistence of Mass Incarceration*, 46 L. & SOC. INQUIRY 1, 24 (2021).

426. Mirko Bagaric & Daniel McCord, *Decarcerating America: The Opportunistic Overlap Between Theory and (Mainly State) Sentencing Practice as a Pathway to Meaningful Reform*, 67 BUFF. L. REV. 227, 234–36 (2019).

427. See Alexandra Natapoff, *Misdemeanors*, 85 S. CAL. L. REV. 1313, 1320–21 (2012); Jonathan Simon, *Misdemeanor Injustice and the Crisis of Mass Incarceration*, 85 S. CAL. L. REV. POSTSCRIPT 113, 116–17 (2012).

428. See Bruce Western & Christopher Wildeman, *Punishment, Inequality, and the Future of Mass Incarceration*, 57 U. KAN. L. REV. 851, 851–52, 863–66 (2009); JESSICA T. SIMES, PUNISHING PLACES: THE GEOGRAPHY OF MASS IMPRISONMENT 63, 103 (Univ. of Cal. Press 2021); MICHELLE ALEXANDER, THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS 8, 188 (The New Press 2010).

429. See *infra* Part IV.B.

430. See generally Levin, *supra* note 423 (surveying the lines of argument in the literatures of mass incarceration, overcriminalization, and mass criminalization and highlighting differences and distinctions among the varying critiques).

431. Todd R. Clear & James Austin, *Reducing Mass Incarceration: Implications of the Iron Law of Prison Populations*, 3 HARV. L. & POL’Y REV. 307, 312 (2009).

of ways in which a person may run afoul of the law and be sent to prison or jail, coupled with the severity of the potential sentences for these offenses, become important considerations. Library laws across states demonstrate a range of potential reactions to misconduct within libraries, as well as multiple instances of overcriminalization and severe punishment for those who commit library crimes.⁴³²

As Part II demonstrates, there are a lot of library crimes.⁴³³ Dozens of states have laws specifically targeting the theft of library materials, destruction of library materials, and failure to return library materials.⁴³⁴ One need not prove outright theft of materials in all situations either. Several states criminalize the mere concealment of library materials⁴³⁵—effectively assuring that anyone who arouses suspicion from observation of placing a book in a bag or article of clothing may be arrested and prosecuted.⁴³⁶ This, in turn, is likely to result in the disproportionate arrest, prosecution, and potential conviction of people of color living in areas with high crime rates.⁴³⁷ The initial decision to pay closer attention to certain groups—a decision often made on the basis of race—may effectively guarantee that targeted groups will bear the brunt of particular enforcement; a likelihood compounded by laws like criminal concealment that permit arrest and prosecution before one has even tried leaving the library.⁴³⁸

It is not only the number of library crimes, but their severity—and variation in severity—that makes them worthy of attention. In some states, library theft is always a misdemeanor.⁴³⁹ But other states take a different tack, punishing more

432. See *supra* Part II.

433. See *supra* Part II.

434. See *supra* Parts II.A, II.B, II.C.

435. See *supra* Part II.A.2.

436. See *supra* Part II.A.2.

437. See GOTTSCHALK, *supra* note 191, at 104; Megan Quattlebaum, *Let's Get Real: Behavioral Realism, Implicit Bias, and the Reasonable Police Officer*, 14 STAN. J. CIV. RTS. & CIV. LIBERTIES 1, 12–14 (2018) (describing the implicit bias that Black people tend to be associated with criminal activity).

438. See Devon W. Carbado, *(E)racing the Fourth Amendment*, 100 MICH. L. REV. 946, 977 (2002) (arguing that, when confronted with a group of white men and a group of black men in a neighborhood, an officer “will likely stop the group of black men” in light of “racial stereotypes as to the color of crime”).

439. See, e.g., GA. CODE ANN. § 20-5-52 (2023) (theft of library materials punishable as misdemeanor); MD. CODE ANN., EDUC. § 23-408(b) (West 2023) (punishable by imprisonment of up to three months, a fine of up to \$250, or both); MICH. COMP. LAWS § 750.364 (2023) (library theft punishable as misdemeanor); MINN. STAT. § 609.541 (2023) (library theft punishable as misdemeanor); S.C. CODE ANN. § 16-13-331 (2023) (library theft punishable by

valuable thefts with years in prison. In Wisconsin, theft of library materials valued at more than \$1,500 may result in a sentence of up to six years in prison.⁴⁴⁰ In Rhode Island, one faces up to three years for theft of library materials valued at more than \$1,500, six years if the value is greater than \$5,000, and 10 years if the value is greater than \$10,000.⁴⁴¹ These thresholds may seem high, but books may be valuable—especially if the books are specialized for a smaller academic or professional readership.⁴⁴² And in some states, it does not take much to face felony charges.⁴⁴³ Illinois law imposes a mandatory minimum penalty of two years and a maximum of five years in prison if the value of stolen library materials exceeds \$300.⁴⁴⁴ And Massachusetts punishes the theft of library materials valued at \$250 or more with up to five years in prison, a fine of up to \$25,000, or both.⁴⁴⁵

Comparisons between library crimes reveal stark differences as well. Laws prohibiting the destruction of library materials or property, for example, tend to have tougher sentences than library theft and other library crimes.⁴⁴⁶ To be sure, many states punish the destruction of library materials or property as misdemeanors.⁴⁴⁷ But other states punish destruction of library materials with

imprisonment of up to six months, unless value of stolen property is less than \$100, in which case the maximum jail time is 30 days).

440. WIS. STAT. §§ 939.50(3)(h), .51(3)(a), 943.61(5) (2023).

441. 11 R.I. GEN. LAWS §§ 41-5(a)(1)-(3), -14.1 (2023).

442. I am sure I am not the only former litigator who has thought about whether it would be worth braving California's library theft statute for the endlessly useful *Rutter Guide to Civil Procedure Before Trial*—currently priced at \$924.00 on Thompson Reuters's website. See *Civil Procedure Before Trial (The Rutter Group California Practice Guide)*, THOMPSON REUTERS, <https://store.legal.thomsonreuters.com/law-products/Practice-Materials/Civil-Procedure-Before-Trial-The-Rutter-Group-California-Practice-Guide/p/100029497> [<https://perma.cc/JAU2-RWCY>].

443. See, e.g., 720 ILL. COMP. STAT. 5/16-3(d) (2023); 730 ILL. COMP. STAT. 5/5-4.5-40(a) (2023).

444. See 720 ILL. COMP. STAT. 5/16-3(d) (2023); 730 ILL. COMP. STAT. 5/5-4.5-40(a) (2023).

445. MASS. GEN. LAWS ch. 266, § 99A (2023).

446. See, e.g., ARK. CODE ANN. §§ 5-4-401(a)(3)-(4), 13-2-803(b) (2023) (providing potential punishments range up to 5 to 20 years if the value of the materials exceeds \$2,500, and penalties may be between 3 and 10 years in prison if the value of the materials is between \$500 and \$2,500).

447. See, e.g., CAL. EDUC. CODE § 19910 (West 2023); CAL. PENAL CODE § 19 (West 2023) (punishing destruction of library materials as a misdemeanor with no specified jail time or fine, thereby implicating California's default misdemeanor punishment of up to six months in jail, a fine of up to \$1,000, or both); 24 PA. CONS. STAT. § 9376 (2023); 18 PA. CONS. STAT. § 6708

years in prison if certain monetary thresholds are met.⁴⁴⁸ And still other states punish destruction of library materials or property as felonies with no reference to the value of the destroyed materials, or with such low thresholds that felony penalties are all but inevitable.⁴⁴⁹

Library crimes do not only relate to library materials.⁴⁵⁰ These laws may also contribute to heightened sentencing for seemingly unrelated crimes that happen to take place in the proximity of a library.⁴⁵¹ Take one of the more infamous contributors to the phenomenon of mass incarceration—the War on Drugs.⁴⁵² In some jurisdictions, library crime plays a key role in the War on Drugs. In the District of Columbia, those accused of distributing or possessing with the intent to distribute drugs within 1,000 feet of a library face a doubling of their potential sentence.⁴⁵³ Virginia has an independent felony for those who sell, manufacture,

(2023); 101 PA. CONS. STAT. § 15.66(a)(8) (2023) (stating the destruction of library materials is a summary offense, punishable by up to 90 days in jail); 11 R.I. GEN. LAWS § 11-44-15(a) (2023) (stating the destruction of library materials or property is a misdemeanor which, under Rhode Island law, is punishable by up to one year in jail, a fine of up to \$100, or both); S.C. CODE ANN. § 16-13-330 (2023) (stating the destruction of library materials is punishable by a fine of up to \$100 or imprisonment for up to 30 days).

448. *See, e.g.*, ARK. CODE ANN. §§ 5-4-401(a)(3)-(4), 13-2-803(b) (2023) (stating the potential punishments range up to 5 to 20 years if the value of the materials exceeds \$2,500, and penalties may be between 3 and 10 years in prison if the value of the materials is between \$500 and \$2,500); OHIO REV. CODE ANN. §§ 2909.05, 2929.14(A)(3)-(5) (West 2023) (stating the destruction of property over \$150,000 punishable by up to three years in prison, and destruction of property valued between \$7,500 and \$150,000—what a range!—punishable by up to 18 months).

449. *See* MASS. GEN. LAWS ch. 266, § 100 (2023) (stating the damage or destruction of library materials punishable by up to two years in prison, regardless of materials' value); N.C. GEN. STAT. §§ 14-398, 15A-1340.17(c)-(d) (2023) (stating the damage or destruction of library materials punishable by 4 to 25 months in prison as long as the value of materials is greater than \$50); N.Y. EDUC. LAW § 264 (McKinney 2023) (stating that damaging library property punishable by up to three years in prison, regardless of the value of the materials); OKLA. STAT. tit. 21, § 1785 (2023) (same as New York).

450. *See, e.g.*, D.C. CODE §§ 22-4502.01(a)-(b), 48-904.07a(a) (2023).

451. *See, e.g., id.* § 48-904.07a(a), (b) (doubling the penalty for drug distribution within a drug free zone such as a library).

452. *See* Ernest Drucker, *Drug Law, Mass Incarceration, and Public Health*, 91 OR. L. REV. 1097, 1099–1102 (2013) (describing the role of drug laws in contributing to mass incarceration); Bailey D. Barnes, *The Perfect Storm: Substance Abuse, Mental Illness, and Rural America*, 20 U.N.H. L. REV. 317, 327–28 (2022) (discussing how the War on drugs “has led to overcrowded jails in rural America”). To be clear, drug crime is one contributor to mass incarceration, but is not the primary contributor, a point that John Pfaff makes at length. *See* PFAFF, *supra* note 425, at 21–50.

453. *See* D.C. CODE § 48-904.07a (2023).

or possess with the intent to sell controlled substances on public library property—with a mandatory minimum sentence of one year in prison and a maximum of five years.⁴⁵⁴ Michigan law creates mandatory minimums for those convicted of certain drug crimes who happen to have been within 1,000 feet of libraries.⁴⁵⁵ West Virginia and Utah also enhance the sentences of drug offenders who were within 200 feet (West Virginia) and 100 feet (Utah) of libraries.⁴⁵⁶

Libraries play a similar role in gun crimes—exacerbating the sentences of those who possess, or unlawfully possess, firearms at or near libraries.⁴⁵⁷ As with drug crimes, the District of Columbia doubles the sentence of those who unlawfully possess firearms within 1,000 feet of a library.⁴⁵⁸ New York makes it a felony to carry firearms on library property.⁴⁵⁹ In both drug and gun crime penalty enhancements, those bearing the brunt of increased prosecution and sentencing are more likely to be people of color.⁴⁶⁰

C. Reforming Library Crime

What might be done about these numerous and harsh library crimes? As a start, there should be serious consideration devoted to reducing these crimes to misdemeanors in most cases. This is not unprecedented as numerous states with library crimes punish library theft and destruction of materials with misdemeanor penalties, rather than the extensive sentences surveyed above.⁴⁶¹ Reconsidering whether library crimes should rise to the level of felonies may be one small step to ensuring that library crime contributes less to mass incarceration.

Options other than criminal law exist as well. Several states punish theft of library materials and failure to return with civil penalties rather than criminal punishment—an approach that offers libraries the opportunity to recover the costs of stolen or damaged materials without invoking the harsh machinery and extensive collateral consequences of criminal laws against their current and former

454. VA. CODE ANN. § 18.2-255.2(A)(5), (B) (2023).

455. See MICH. COMP. LAWS § 333.7410(2) (2023).

456. W. VA. CODE §§ 60A-4-401(a)(i)–(ii), -406(a)(3), (b)(3) (2023); UTAH CODE ANN. § 58-37-8(1), (4)(a)(vi), (4)(b)–(c) (West 2023).

457. See, e.g., D.C. CODE § 22-4502.01(a)–(b) (2023).

458. *Id.*

459. N.Y. PENAL LAW § 265.01-e(1), (2)(d) (McKinney 2023).

460. See Levin, *supra* note 423.

461. See *supra* text accompanying note 48. *But see* OHIO REV. CODE ANN. § 2909.05(E) (West 2023).

patrons.⁴⁶² Laws may make exceptions to a civil regime to account for instances where materials that are stolen or damaged are of historical significance or cannot be readily replaced. Missouri, for example, criminalizes the failure to return materials, but provides that “[p]ayment to the library, in an amount equal to the cost of replacement of an item of no historical significance shall be considered returning the item,” thereby providing a way of defeating the elements of the criminal charge while leaving a means of penalizing exceptional offenses.⁴⁶³

Reforming library crimes will not solve mass incarceration—the sources of which range far beyond the walls of the library. But James Forman describes mass incarceration as “the result of a series of small decisions, made over time, by a disparate group of actors,” and argues that it “will likely have to be undone in the same way.”⁴⁶⁴ Library crime may only be a tiny slice of the laws, policies, and practices contributing to mass criminalization. But bringing this subset of crimes to light and highlighting the harsh punishments many library crimes carry is at least a tiny step in the direction of reforming this area of criminal law.

V. VULNERABLE COMMUNITIES AND THE ROLE OF LIBRARIES

A. *The Library’s Role*

As we will see in the next Part, judicial discussions of the library’s role tend to focus on the educational and informative resources libraries provide.⁴⁶⁵ While this is certainly a part of what libraries do, there is much more to libraries with their place in the communities and the resources they may provide to less-advantaged members of these communities.

462. See, e.g., CAL. PENAL CODE § 490.5(b)–(c) (West 2023) (providing for civil remedies by libraries against adults and emancipated minors who steal library materials, albeit in conjunction with a statute criminalizing library theft); IDAHO CODE § 4-107 (2023) (providing the Idaho Law Library with a civil remedy of recovering up to three times the value of materials in cases where a person fails to return library materials); N.H. REV. STAT. ANN. §§ 625:9(b), 202A:25 (2023) (stating a failure to return materials is a noncriminal violation); VT. STAT. ANN. tit. 22, § 111 (2023) (providing for civil action by libraries in cases where materials are damaged or stolen, albeit in conjunction with a statute criminalizing the willful damaging of library materials). As for the severity of collateral consequences that may accompany seemingly minor offenses. See Jenny Roberts, *Why Misdemeanors Matter: Defining Effective Advocacy in the Lower Criminal Courts*, 45 U.C. DAVIS L. REV. 277, 298–303 (2011); Eisha Jain, *Proportionality and Other Misdemeanor Myths*, 98 B.U. L. REV. 953, 959–64 (2018).

463. See MO. REV. STAT. § 570.210 (2023).

464. JAMES FORMAN JR., *LOCKING UP OUR OWN: CRIME AND PUNISHMENT IN BLACK AMERICA* 229 (1st ed., Farrar, Straus & Giroux 2017).

465. See *infra* Part V.A.

What are libraries? In her collection of short stories, Ali Smith intersperses her friends' and acquaintances' thoughts on libraries.⁴⁶⁶ The responses, which typically refer to public libraries, include the characterization of a library as “the one place you can just turn up to, a free space, a democratic space where anyone can go and be there with other people, and you don't need money.”⁴⁶⁷ Another described libraries as places that “can definitely lead you astray in the best possible way,” and as “places to escape to.”⁴⁶⁸ Smith also includes a response from Richard Pople, who states that

Libraries are, at heart, helpful and kind providers. It is hard for those who perhaps don't feel the need to visit their local libraries to understand what a vital service they provide for communities and individuals who do – and those who do are often the most vulnerable.⁴⁶⁹

Pople goes on to describe how libraries provide access to computers and assistance with their use—a vital service for those who need to find employment, engage with online service providers, and learn to use the technology necessary to do so in the first place.⁴⁷⁰ The American Library Association's 2019 *State of America's Libraries* Report acknowledges that “[h]omeless people rely on the public library for books, computer and internet access, and warmth” and notes libraries' roles in responding to the opioid crisis.⁴⁷¹ Former librarian Amanda Oliver paints a nuanced picture of the library, arguing that libraries are “resolutely radical institutions” in light of their being “free to use and open to the public, spaces that demand nothing from you to enter and nothing from you to stay.”⁴⁷² Yet Oliver also claims that libraries are “places of objectification, racism, sexual assault, and other human atrocities.”⁴⁷³ The University of Washington Libraries note that libraries provide access to health information by overcoming language barriers, providing reliable internet access, and gathering a wide array of resources

466. See ALI SMITH, *PUBLIC LIBRARY AND OTHER STORIES* 19 (Penguin Random House U.K. 2015).

467. *Id.* at 57–58.

468. *Id.* at 57–58, 124, 134.

469. *Id.* at 208.

470. *Id.*

471. AM. LIBR. ASS'N, *THE STATE OF AMERICA'S LIBRARIES: A REPORT FROM THE AMERICAN LIBRARY ASSOCIATION* 6, 8 (2019), <https://www.ala.org/news/sites/ala.org.news/files/content/2019-soal-report-final-accessible.pdf> [<https://perma.cc/MBQ9-5TSH>].

472. AMANDA OLIVER, *OVERDUE: RECKONING WITH THE PUBLIC LIBRARY* 11 (Chi. Rev. Press 2022).

473. *Id.*

for community members.⁴⁷⁴ When times are tough, the library provides. Susan Orlean notes that during the Great Depression, libraries “were warm and dry and useful and free; they provided a place for people to be together in a desolate time” and that after the stock market crash, book circulation for the Los Angeles library “rose by sixty percent.”⁴⁷⁵ Mark Willis emphasizes that libraries’ openness serves as a draw for those with nowhere else to go, and suggests that libraries should “make the best of” this inevitability by providing easy-to-access references to social services.⁴⁷⁶

While libraries are expected to take on an increasing number of roles by not only providing information and materials, but also shelter, warmth, access to social service resources, and other necessities, this expectation does not always live up to reality.⁴⁷⁷ In the face of increasing needs for shelter, mental health, and substance abuse services, libraries face low funding and inadequate training and staffing.⁴⁷⁸ Despite this, libraries are still expected to live up to the ideal of “libraries as sanctuaries” and “to meet a vast range of social needs without correspondingly vast budgets”—an expectation that often forces librarians to engage in a variety of tasks on and off the clock.⁴⁷⁹ In light of all of this, there may be a strong argument to include libraries in conversations about other institutions like schools and prisons as institutions which purportedly serve a straightforward purpose (information provision, education, and punishment), yet which tend to be one-stop locations for an increasingly broad array of social services.⁴⁸⁰

474. See *A Library Lifeline for Underserved Communities*, UNIVERSITY OF WASH.: UW LIBRARIES BLOG (Mar. 22, 2022), <https://sites.uw.edu/libstrat/2022/03/22/a-library-lifeline-for-underserved-communities/> [<https://perma.cc/7X94-JV2Q>].

475. ORLEAN, *supra* note 1, at 195.

476. MARK R. WILLIS, DEALING WITH DIFFICULT PEOPLE IN THE LIBRARY 56–61 (Am. Libr. Ass’n 1999).

477. See Tracy M. Soska & Adria Navarro, *Social Workers and Public Libraries: A Commentary on an Emerging Interprofessional Collaboration*, 20 ADVANCES SOC. WORK 409, 413–16 (2020) (describing how social workers may augment the services provided by public libraries); Amy Schofield, *Social Workers and Librarians—A Case for Why We are BFFs*, AM. LIB. ASS’N (Dec. 10, 2018), <https://www.ala.org/advocacy/diversity/odlos-blog/social-workers> [<https://perma.cc/C6K3-MHXT>] (describing the benefits of employing social workers along with librarians).

478. See Benson, *supra* note 4.

479. See Jennifer Howard, *The Complicated Role of the Modern Public Library*, HUMANS. MAG. (2019), <https://www.neh.gov/article/complicated-role-modern-public-library> [<https://perma.cc/HQT3-SESX>].

480. See Fanna Gamal, *The Miseducation of Carceral Reform*, 69 UCLA L. REV. 928, 948–49 (2022) (comparing schools and prisons and discussing how “the American welfare state . . .

Much of this discussion of libraries' roles tend to assume the library at issue to be a public library. But many of these points apply to different types of libraries as well, such as primary school libraries, university libraries, and law libraries. Law libraries, for example, frequently serve disadvantaged members of the community who seek these libraries out for vital legal resources.⁴⁸¹

And consider the ideal of a library as a place in which one can be drawn astray and find resources one may not have been looking for, or materials one did not even know existed. A public-school library helps fulfill this role by providing books and resources beyond the set curriculum of the classroom that are broad and diverse enough to appeal to the needs of each student and to reflect the diversity of the community. As Martha Hickson, a high school librarian in Annandale, New Jersey, puts it:

[T]he role of a school library is to serve, promote and support the information needs of all students, regardless of their learning style, ability, or cultural, linguistic, or socioeconomic background. The school library provides a rich variety of resources and services that reflect the diversity of the community, including books, programs and other materials that represent a variety of perspectives, experiences and worldviews. As a result, the school library helps students develop empathy, cultural competence, respect for diversity and an appreciation for the richness of human experience.⁴⁸²

deputizes the compulsory institutions of education and incarceration to perform necessary and specialized functions of managing the nation's poor and needy").

481. See, e.g., *About Us*, LA LAW LIBR., <https://www.lalawlibrary.org/about-us> [<https://perma.cc/RM5D-89NC>] (noting that, as the nation's "second largest public law library," one of its primary purposes is to give "the public and self-represented litigants unique direction on how to address their legal concerns"); *Vision/Mission*, SAN DIEGO L. LIBR., <https://sandiegolawlibrary.org/visionmission/> [<https://perma.cc/XQ44-N3WZ>] (noting the law library's role in providing "access to justice"); *Self-Help Legal Research Guide: Missouri*, UNIV. OF MO. SCH. OF L., <https://libraryguides.missouri.edu/c.php?g=28063&p=173034> [<https://perma.cc/L4XQ-UMWT>] (Feb. 18, 2021, 2:26 PM) (noting that the University of Missouri's Public Law Library "offers some legal education and self-help materials" and listing various links to resources regarding legal aid and self-representation).

482. Kate Okeson & Amy Moran, *School Libraries Are for Every Person in School Every School*, NJEA (Apr. 3, 2023), <https://www.njea.org/school-libraries-are-for-every-person-in-school-every-school%E2%80%9C> [<https://perma.cc/KJ4C-J4YQ>].

College and university libraries serve alongside faculty and students in furthering teaching and research goals.⁴⁸³ But these libraries, as well, may provide resources for members of the general community beyond the college or university.⁴⁸⁴

B. *Library Crime and the Role of the Library*

With this more complete understanding of libraries expected and actual roles in mind, how do library crimes fit into the picture? The preceding discussion of mass incarceration and overcriminalization already gets us part of the way there.⁴⁸⁵ Library crimes—particularly those that criminalize conduct where civil suits and fines may fulfill a similar role, and those with notably high sentences—play at least a small role in the larger phenomenon of mass incarceration and overcriminalization.⁴⁸⁶ They create crimes where none need exist, and they punish conduct with prison terms where civil penalties, fines, and, in extreme circumstances, shortened jail terms would suffice.

Discussions of mass incarceration and overcriminalization frequently note how vulnerable communities bear the brunt of increased scrutiny, prosecution, and criminal penalties.⁴⁸⁷ Those who are more likely to be viewed as suspicious because of their race are more likely to be the subjects of initial contact by law enforcement officers, which is the first step in the overall process of prosecution and conviction.⁴⁸⁸ Because library crimes are necessarily more likely to impact and target those who patronize and rely upon libraries, these crimes are most likely to impact those who libraries are meant to serve.⁴⁸⁹ These people—those without shelter, those without access to internet and other technologies, and those seeking out basic or supplemental educational resources—fall within the disadvantaged

483. See, e.g., *Seton Hall University Libraries, Strategic Plan 2020*, UNIV. LIBRS.: SETON HALL UNIV. (Jan. 6, 2020), <https://library.shu.edu/library/mission> [<https://perma.cc/7S8D-ZQLJ>] (noting the library's goals of assisting in research and teaching and providing a diverse range of tools for students); *Collection Development Policy*, WASH. UNIV. IN ST. LOUIS: UNIV. LIBRS. (2023), <https://library.wustl.edu/about/policies/collection-development-policy/> [<https://perma.cc/E7S5-RPWU>] (noting the library's role of “support[ing] the current research and teaching at the university, as well as supporting new models of research and scholarship.”).

484. See, e.g., *Collection Development Policy*, *supra* note 483 (recognizing that, beyond students and faculty, the library provides service to “alumni, local and visiting researchers, and members of the surrounding community”).

485. See *supra* Part IV.

486. See *supra* Part IV.A.

487. Western & Wildeman, *supra* note 428, at 860.

488. See Carbado, *supra* note 438, at 977.

489. See, e.g., Benson, *supra* note 4.

communities that mass incarceration and overcriminalization already target and disproportionately impact.⁴⁹⁰ Those who are most vulnerable have no place to go other than public places like libraries, and library crimes, along with ordinances and rules such as hygiene and disruption rules, tend to target those who are unhoused or suffering from mental health issues.⁴⁹¹ Laws prohibiting or restricting sex offenders from libraries add to the laundry list of restrictions and requirements that these individuals must already meet, compounding the extensive array of collateral consequences these convictions entail.⁴⁹² Library crimes, therefore, compound criminal inequality by most impacting those who are most in need of the services libraries provide.

At the same time, library crime undermines the role of libraries by standing in contradiction to what communities expect and aspire libraries to be. Recounting her training as a librarian, Amanda Oliver demonstrates this disconnect:

As part of my [District of Columbia Public Library] onboarding process, I had been sent to an ominous concrete building in Northeast DC to create my identification and security badge. A voice behind the buzzer at the main door explained I needed to enter when the door unlatched, take the elevator to the third floor, and look for a sign that said LIBRARY POLICE. I assumed the voice was joking—some strange jab at librarians that I was more than used to by then. But when I got off the elevator, I saw the sign hanging in thick red letters above a door: LIBRARY POLICE. (Later that evening I sent a photo of it to friends with a text that read, “Day one. What the fuck?”)⁴⁹³

This disconnect is not lost on pop culture either. In the early 1990s, the show, *Seinfeld*, introduced audiences to the character of Lieutenant Bookman (played by Philip Baker Hall), a library investigator who pursues after Jerry Seinfeld for a book the library claimed had been overdue since 1971.⁴⁹⁴ Bookman’s obsessive

490. *See id.*

491. *See* Marc L. Roark, *Homelessness at the Cathedral*, 80 MO. L. REV. 53, 80–81, 94–101 (2015).

492. *See* Amy P. Meek, *Street Vendors, Taxicabs, and Exclusion Zones: The Impact of Collateral Consequences of Criminal Convictions at the Local Level*, 75 OHIO STATE L.J. 1, 25–26 (2014); *see also* Jennifer Ekblaw, Note, *Not in My Library: An Examination of State and Local Bans of Sex Offenders from Public Libraries*, 44 IND. L. REV. 919, 940–941, 948–52 (2011) (explaining that library bans on sex offenders “prevent sex offenders from [meaningfully] engaging in protected First Amendment activities” meaning they are overinclusive and not narrowly tailored to the government’s interests).

493. OLIVER, *supra* note 472, at 61.

494. *Seinfeld: The Library* (NBC television broadcast Oct. 16, 1991) (script available at <https://www.seinfeldscripts.com/TheLibrary.htm> [<https://perma.cc/Y9NF-NSRQ>]).

devotion to enforcing the rules of the library relies on the aspirational notions of the freedom and education a library embodies which become twisted by the countervailing ideals of law enforcement, prosecution, and punishment:

Well, let me tell you something, funny boy. Y'know that little stamp, the one that says "New York Public Library"? Well that may not mean anything to you, but that means a lot to me. One whole hell of a lot. Sure, go ahead, laugh if you want to. I've seen your type before: Flashy, making the scene, flaunting convention. Yeah, I know what you're thinking. What's this guy making such a big stink about old library books? Well, let me give you a hint, junior. Maybe we can live without libraries, people like you and me. Maybe. Sure, we're too old to change the world, but what about that kid, sitting down, opening a book, right now, in a branch at the local library and finding drawings of pee-pees and wee-wees on the Cat in the Hat and the Five Chinese Brothers? Doesn't HE deserve better? Look. If you think this is about overdue fines and missing books, you'd better think again. This is about that kid's right to read a book without getting his mind warped! Or: maybe that turns you on, Seinfeld; maybe that's how y'get your kicks. You and your good-time buddies. Well I got a flash for ya, joy-boy: Party time is over. Y'got seven days, Seinfeld. That is one week!⁴⁹⁵

Again, many of these references tend to assume that the library at issue is a public library.⁴⁹⁶ But similar inconsistencies arise when contrasting library crime with the role of school, university, and law libraries.⁴⁹⁷ Consider those who may be most in need of legal resources or referrals to legal aid or other community legal assistance programs. A strong security presence with thorough enforcement practices in a law library may deter those who have had negative experiences with the legal system from seeking out aid in such a place. Additionally, law and university libraries may tend to have more expensive materials in light of limited demand for printed legal resources and the high prices already charged by legal publishers.⁴⁹⁸ Laws providing for harsher penalties for damaging or taking materials from libraries may therefore end up creating zones where library crimes are punished more harshly—a characteristic inconsistent with the legal and educational goal of specialized collections. Enforcement of library crimes in

495. *Id.*

496. *See, e.g., id.*

497. *See, e.g.,* Nicole P. Dyszlewski et al., *Managing Disruptive Patron Behavior in Law Libraries: A Grey Paper*, 107 *LAW LIBR. J.* 491, 519, 529 (2015).

498. *See Rutter Guide to Civil Procedure Before Trial*—currently priced at \$924.00 on Thompson Reuters's website. *See Civil Procedure Before Trial (The Rutter Group California Practice Guide)*, *supra* note 442 (showing the high price of legal books); WIS. STAT. §§ 939.50(3)(h), .51(a), 943.61(5) (2023) (varying punishments by value).

school libraries—typically neutral places for exploration, entertainment, and creativity—may contribute to the school-to-prison pipeline, in which school law enforcement arrests and funnels youths into the criminal legal system from an early age.⁴⁹⁹

One may respond to the critique that library crimes are inconsistent with libraries' goals by arguing that there needs to be some mechanisms in place to ensure that libraries are able to function effectively. Without library crime, the argument goes, we may have no libraries—or at least, not the libraries with the security and breadth of available materials that best serve the community.

This response, however, assumes that library crime is necessary to ensure that libraries remain secure, open, and effective. In truth, a host of alternate measures can accomplish this goal.⁵⁰⁰ A clear set of rules for library users can clarify expectations and give library staff a ready authority to reference when confronting disruptive patrons rather than requiring a resort to law enforcement.⁵⁰¹ Applying these policies in a consistent manner lends legitimacy to them, and may prevent escalation from disruption or misbehavior to outright criminal activity in the face of uneven or discriminatory enforcement.⁵⁰² Libraries may be constructed, and their materials laid out, in a manner that allows library staff to easily monitor for any concealment or destructive behavior and a manner that mitigates the impact of more dramatic criminal acts such as vandalism and arson.⁵⁰³

Additionally, it is worth noting that the “victim” of most library crimes is not an individual, but rather the governmental entity of the library itself. While this does not excuse or justify criminal activity, it does change how those evaluating laws and potential reforms may prioritize certain interests and the options at reformers' and governments' disposal. For instance, it may be less of a dramatic proposal to suggest replacing criminal laws against theft, failure to return, and even

499. See Christina Vercelletto, *Libraries Can Help Disrupt School-to-Prison Pipeline*, SCH. LIBR. J. (Jan. 9, 2018), <https://www.slj.com/story/libraries-can-help-disrupt-school-prison-pipeline> [<https://perma.cc/A5A3-C3WZ>] (noting the school library's role in providing a refuge for students to find relaxation and entertainment, as well as resources for students with behavioral and mental health issues that may otherwise contribute to a higher probability of arrest or discipline).

500. See generally Dyszlewski et al., *supra* note 497.

501. *Id.* at 527–28.

502. *Id.* at 530.

503. Harry Faulkner-Brown, *The Role of Architecture and Design in a Security Strategy*, in SECURITY AND CRIME PREVENTION IN LIBRARIES 70, 73–77 (Michael Chaney & Alan F. MacDougall eds., Ashgate 1992); Bruce A. Shuman, *Designing Personal Safety into Library Buildings*, AM. LIBRS., Aug. 1996, at 37, 38–39.

the destruction of most materials with civil fines and remedies.⁵⁰⁴ There are not individual victims whose lives have been upended and who continue to suffer trauma. And public libraries, as municipal entities, may work with attorneys for these entities—county and city councils, for example—to undertake civil enforcement against library theft and destruction of materials. The option of providing libraries with more funding to make up for damages suffered from theft and material destruction is also on the table—and governing bodies must ask whether they value the possibility of deterrence more than the impact of criminal penalties and collateral consequences on those arrested, prosecuted, and convicted of library crimes.⁵⁰⁵

To be sure, some measures are needed in cases where patrons present a true danger to staff and other patrons. Violence—sometimes with lethal consequences—has occurred in libraries, though such occurrences are rare.⁵⁰⁶ Returning to Oliver’s account of her experience in the District of Columbia Public Library, while her initial reaction to the notion of library police was one of disbelief, her experiences over the following months tell stories including numerous belligerent patrons, concerns for safety, and efforts to deescalate potentially violent conduct.⁵⁰⁷ Still, the methods Oliver and her colleagues tended to use to deter or penalize misconduct in the library was to suspend patrons’ library

504. See *supra* Parts II, IV.C.

505. See RACHEL ELISE BARKOW, *PRISONERS OF POLITICS: BREAKING THE CYCLE OF MASS INCARCERATION* 88–102 (The Belknap Press of Harvard Univ. Press 2019) (discussing the myriad impacts of criminal convictions and the scope of collateral consequences).

506. See *Man Sentenced to Life in Prison in Shooting that Killed Sacramento Librarian*, KCRA, <https://www.kcra.com/article/man-life-in-prison-shooting-killed-sacramento-librarian/40192400> [<https://perma.cc/UTS6-B37E>] (June 3, 2022, 10:47 PM) (reporting on a man who murdered a librarian after ambushing her when she left the building). As for the relative infrequency of violent crimes and sexual assault, a report on increasing crime in the Fort Worth Libraries indicates how media coverage may create an exaggerated picture of the severity and frequency of crimes through tactics such as reporting on increases in incidents rather than raw numbers, emphasizing anecdotal evidence of the most severe occurrences, and failing to provide relevant bases for comparison of the raw numbers provided—such as how many patrons visited the library between June 2021 and August 2022 when the 782 incidents of reported misconduct occurred. See Emily Wolf & Rachel Behrmdt, *‘A Very Dysfunctional, Toxic Environment’: Fort Worth Librarians Who Face Assault, Harassment on the Job Feel Unsupported by Library Administration*, FORT WORTH REP. (Dec. 18, 2022, 12:00 PM), <https://fortworthreport.org/2022/12/18/a-very-dysfunctional-toxic-environment-fort-worth-librarians-who-face-assault-harassment-on-the-job-feel-unsupported-by-library-administration/> [<https://perma.cc/4ELR-AGUK>]. As for incidents of sexual misconduct and physical violence, those incidents made up a total of 74 incidents out of 782 incidents, with “nuisance” incidents like sleeping, playing music loudly, and bathing in restrooms making up the vast majority of reported incidents. *Id.*

507. See OLIVER, *supra* note 472, at 67–68.

privileges—sometimes for the remainder of the day, and sometimes for longer.⁵⁰⁸ Resorting to de-escalation, warnings, and suspensions of library privileges do not require the imposition of criminal penalties and can prove an effective penalty and deterrent for misbehavior.⁵⁰⁹

While no place can be truly safe, and while the safety of library staff and patrons must not be ignored, tough questions remain over whether criminal laws are indeed the answer. These questions are complicated by the prospect of discriminatory enforcement, in which severe criminal conduct by those who may not fit the stereotypical mold of a troublemaker, may end up facing relatively light consequences.⁵¹⁰ To the extent that severe crimes may occur in libraries, criminal laws prohibiting violent crimes continue to exist. As for balancing security needs with providing services from social workers and other trained individuals who may be better suited to deescalate conflict and prevent violent incidents before they occur, these are fact-intensive questions that require deliberation and case-by-case implementation—not the blunt instrument of harsh criminal laws.

Library crimes stand in stark contrast to the idealized view of libraries as locations open to all. Excluding certain categories of people, and threatening severe criminal penalties for determinations of misconduct related to library services risks turning these purportedly safe spaces into mechanisms of

508. *Id.* at 109.

509. See WILLIS, *supra* note 476, at 17–23 (emphasizing the importance and effectiveness of de-escalation techniques in the library setting); Wolf & Behrmdt, *supra* note 506 (noting that bans from libraries are frequently the penalties imposed for violating library rules and guidelines, and quoting the Fort Worth Public Library’s Director as stating that patrons comply the vast majority of the time).

510. See Jaxon Van Derbeken, *S.F. Gay-Book Slasher Put on Probation / Vandalism Charge Also a Hate Crime*, SFGATE (Sept. 19, 2002), <https://www.sfgate.com/news/article/s-f-gay-book-slasher-put-on-probation-2795165.php> [<https://perma.cc/2YAQ-YG7E>] (reporting that a man, who “[b]y all accounts . . . is a mild-mannered man” with no criminal record and a job as a security guard, was convicted of slashing the pages of 607 library books written by gay authors over the course of a year, and ultimately sentenced to probation and required to pay \$9,600 in restitution). Under California law, damaging library materials is a misdemeanor, although vandalism generally is punishable as a felony with up to three years in prison. See CAL. PENAL CODE §§ 594, 1170(h)(1) (West 2023); CAL. EDUC. CODE § 19910 (West 2023). The fact that the books were vandalized over the course of a year means that this conduct could have implicated numerous misdemeanors and potentially felony charges, yet this housed, employed, white, male defendant ultimately faced no jail time for his year-long spree of misconduct targeting works by gay authors.

surveillance and prosecution. The role of libraries, and the benefits they provide to those most vulnerable, add urgency to the reforms discussed above.⁵¹¹

VI. CONCLUSION

Library crimes are pervasive, appearing in most states and imposing criminal sanctions for a range of misconduct related to library services.⁵¹² They run the gamut from the standard crimes of library theft, failure to return materials, and destruction of materials, to the specialized crimes of library trespass, destruction of library records, and concealment of materials.⁵¹³ Others work in tandem with more generalized crimes—modifying theft statutes, enhancing penalties for drug and gun restrictions, and prohibiting those with certain prior offenses from approaching, entering, or working at libraries.⁵¹⁴

While these laws may play only a minor role in a larger system of mass incarceration and overcriminalization, their contents and structure are consistent with these phenomena and warrant reform.⁵¹⁵ This reform is all the more justified by the roles that society expects libraries to fulfil. If libraries are to be truly welcoming and tolerant places where those without a place to live or stay can find information, shelter, warmth, bathrooms, and other services, the overly extensive and harsh library crimes in numerous states should be reformed or eliminated.⁵¹⁶

511. *See supra* Part V.

512. *See supra* Part II.

513. *See supra* Part II.

514. *See supra* Part II.D.

515. *See supra* Part IV.

516. *See supra* Parts II, V.A.