LIVE FREE'S

AGENDA FOR ENDING MASS INCARCERATION &CRIMINALIZATION

INTRODUCTION
by Pastor Michael McBride and Andrea Marta

As we mark the second anniversary of the killing of Michael Brown, we owe gratitude to the courageous young people in Ferguson who exposed the untenable environment that so many communities of color fight against daily. They ripped the cover off policies and practices that criminalize black and brown bodies for economic and political gain. They, and the thousands of others who've stood against the loss of so many men and women at the hands of the police, have created moral urgency to end systems that dehumanize bodies on the streets, and count as progress those in jail beds and under state supervision. **They've shown that there is a different, more humane path forward to safe, free and whole communities.**

The time we and other members of PICO's Live Free team spent marching with young people and hearing their stories after Michael Brown's murder brought home for us, as it did organizers, clergy, formerly incarcerated leaders and directly impacted families and community members across the country, that **Ferguson was not unique**. **In far too many of our cities and counties prosecutors, judges and sheriffs operate in the shadows.** These local officials have extraordinarily high levels of discretion, but too often little commitment to transparency. **The result is policies and practices that are decimating our communities through overcharging young Black and Latino men and women, setting bail that average community members cannot afford, creating dangerous and often times deadly conditions in county jail**s and refusing to hold law enforcement officers accountable for police misconduct and murder. The truth is that there are Fergusons in almost every community in our country.

This report – is a tool for local communities to reduce the number of people of color lost to gun homicides and incarceration. It shows that we are putting far too many people in local jails for extraordinarily long periods of time – often without ever being charged or convicted of crimes. Our jails are full of people behind bars simply because they're poor, or have untreated mental health or drug addiction. The human and financial costs of jail-first policies are enormous. The report compares county jail data and local policies to best practices in communities across the U.S. It provides a roadmap for dramatically reducing the number of people entangled in the criminal justice system and adopting policies that prevent gun violence without criminalizing whole communities.

All roads to ending mass incarceration run through cities and counties. Our local jails are the front doors to a destructive and corrupt criminal justice system. Yes we are working to change federal and state criminal justice policy. **But we need our sheriffs, prosecutors, police chiefs, mayors, city council members and county commissioners to do their part.** They must be allies not obstacles to reform. That begins with refusing to take campaign contributions from private companies that profit from locking people up, refusing to see the criminal justice system as a source of revenue, refusing to lobby against sentencing reform, and committing to policing and prosecution focused on community accountability, diversion and restorative justice.

What follows is a blue print, a set of best practices implemented across the country that we challenge counties and local municipalities to adopt. Will your county be a LIVE FREE County?

LIVEFREE

A campaign of PICO National Network

INTRODUCTION
by Pastor Michael McBride and Andrea Marta 2

TABLE OF CONTENTS 4

EXECUTIVE SUMMARY 5

LOCAL DATA 9

RESEARCH OVERVIEW
by Mike Massoglia 10

BEST PRACTICES 13

California Partnership for Safe Communities
By Stewart Wakeling, Daniela Gilbert and Vaughn Crandall, ... 13

Measuring Good Policing
By Tracey L. Meares is the Walton Hale Hamilton Professor of Law at Yale Law School 18

Implementing Justice Alternatives at the Local Level
By Kaitlin Kall, Program Associate, Vera Institute of Justice 23

Monetary Sanction Policy Statement
By Alexes Harris, Associate Professor of Sociology, University of Washington 28

Identifying Safe and Just Prosecution
By Taylor Pendergrass, Criminal Justice Policy Expert and Litigator 34

The School to Prison Pipeline
By Paul Hirschfield, Associate Professor of Sociology, Rutgers University 40

Ice Detainers, Crime and the Criminal Justice System
By Michael T. Light, Assistant Professor of Sociology, Purdue University 46

The High Cost of Corrections Privatization
By Jeremy Mohler, Communications Specialist, In the Public Interest 53

Reentry Support for Families and Children of Inmates
By Sara Wakefield, Associate Professor School of Criminal Justice, Rutgers University 59

Voting Rights Restoration
By Christopher Uggen, Professor of Sociology and Law, University of Minnesota 63

Expanding Employment Opportunities for People with Conviction Records
By National Employment Law Project 71

ORLEANS PARISH BEST PRACTICES ANALYSIS 76

CALL TO ACTION
by Dr. Robert “Biko” Baker 78

ACKNOWLEDGMENTS 79

EXECUTIVE SUMMARY

Orleans Parish has adopted overly aggressive policing and prosecution strategies that are entangling far too many Black men and women in the criminal justice system, while doing little to make the community safer. The city and parish are failing to follow best practices for reducing incarceration, improving police community relationships and preventing violence.

.

- **Between 1985 and 2014 the per capita jail population in Orleans Parish rose by 20%, from 5.05 to 6.08 people incarcerated per 1,000 residents.**
- **The per capita incarceration rate is the highest among the 20 counties studied, Orleans Parish is ranked first in the study followed by Duval County, Florida.**
- **African Americans are 3.1 times more likely to be incarcerated than Whites.**
- **59% of the total jail population in 2014 was held without being convicted of a crime.**
- **Many people found innocent or whose charges are ultimately dismissed, are spending long periods of time in jail in Orleans County, more than 28% of people who had their charges dismissed or were found innocent spent more than 1 week behind bars, with more than over 2% percent spending more than 6 months.**
- **In New Orleans in 2015 there were 165 homicides and through August 31 2016 there have been 106 homicides.**

Orleans Parish's elected officials are responsible for the safety and wellbeing of all people in the parish. But historically they have pursued policies that cycle large number of Black men and women through the criminal justice system and effectively criminalize whole communities.

In 2010 the Department of Justice began an investigation into the procedures and practices of the New Orleans Police Department and in 2011 issued a report on the unconstitutional practices of the New Orleans Police Department resulting in a Consent Decree. While some amount of progress has been made to meet the requirements of the Consent Decree, there is much room for the City of New Orleans and the police department to make significant changes.

- **The City of New Orleans has committed to the implementation of the Group Violence Reduction Strategy and Procedural Justice techniques but has yet to see a significant drop in the number of homicides. These are solid building blocks but a more robust implementation strategy is need including implementation of model programming coming out of Richmond, California's Office of Neighborhood Safety, which in combination with Ceasefire has resulted in double-digit reductions in homicides for the past several years.**

- **New Orleans PD has changed policy and procedures and has implemented some training for officers, their own data on stops, searches and arrests points to a need to quickly train all offices in implicit bias.**

- **The Current Prosecutor, Cannizzarro has inherited an office with a long history of misconduct and has not done much to change this, including his practice of prosecuting juveniles as adults. Implementation of responsible prosecutorial practices is critical as is the transparent reporting of data.**

- **While Pretrial Services are in place in Orleans Parish, it is clear that they are not being fully implemented given that over half of those currently incarcerated are held without being convicted of a crime.**

- **While the City of New Orleans has implemented a fair hiring policy there is little evidence that formerly incarcerated community members are able to identify and gain employment through the policy. The County and City have yet to make significant investments in re-entry services and have not create fair housing policies to support those returning from incarceration.**

Mass incarceration may be a national issue, but solving it requires sustained local action in Orleans Parish. The good news is that there are tested research-based policies that other counties across the nation have adopted that have succeeded in reducing the number of people of color in jail and under the supervision of the criminal justice system, while making communities safer and refocusing public resources on, jobs and job training, education, mental health and drug treatment and violence prevention.

This report shows that there is a better way forward for Orleans Parish. Change is possible, but only if local officials commit to eliminate glaring racial disparities in policing and prosecution. As the best practices in this report show, real reform goes beyond

ORLEANS PARISH REPORT CARD

LIVEFREE

VIOLENCE REDUCTION

1. Ceasefire program fully implemented – YES!

PRIVATE PROFITEERING

1. No private prison contracts – NO!
2. In-source contracts for services – UNDETERMINED
3. No acceptance of political contributions from private vendors – NO!

RE-ENTRY

1. Fair hiring policy – PARTIAL

   Governor signed state bill, New Orleans also has City policy but there is no data to show effectiveness

2. Reinvestment of criminal justice resources into transitional jobs – NO!
3. Transitional housing – PARTIAL

   There are some but they are insufficient for the volume of returnees

4. Voting rights restoration – PARTIAL

   Upon completion of parole or probation one can be reinstated as a voter.

RESPONSIBLE PROSECUTION

1. Report on racial disparities – YES!
2. Minimize length of parole and probation – NO!
3. Pre-trial services within 24 hours – PARTIAL!

   Commitment to Pretrial Services but not fully or fairly implemented

4. Limited prosecution of misdemeanor and limiting jail time to no longer than 365 days – NO!
5. No/limited Direct File transfer of Juveniles to Adult courts without judicial review – NO!
6. Safeguards on civil forfeiture – NO!

POLICE ACCOUNTABILITY

1. Implicit bias training for police officers – PARTIAL

   Mandated through Consent Decree, training to be implemented in 2016

2. Civilian review board – NO!
3. Independent prosecutors for police shootings – NO!
4. Full transparency on use of force incidents – PARTIAL

   As part of the Consent Decree the Police Department publishes an annual use of force report pertaining Use of Force incidents. The information does not include race or gender data.

SCHOOLS TO PRISON PIPELINE

1. Ban on suspensions/expulsions in elementary – PARTIAL

   Only expulsions in Orleans Parish

2. Restorative justice programs in schools – PARTIAL

   Only about 5 schools in Recovery school District in Orleans Parish

3. Disciplinary code minimizes out of school suspensions, expulsions and arrests – YES!
4. Limited role for police focused on safety – NO!
5. Positive behavioral interventions & supports – PARTIAL

   Due to shorter systems schools are able to develop and create these supports. Many have not

FEES AND FINES

1. Eliminate all non-restitution fines, fees, surcharge assessments, interest and collection charges – NO!
2. Justice related debt collected as a civil matter no criminal sanctions for non-payment – NO!
3. Base fines and collection practices on individualized assessment of ability to pay – NO!
4. Alternatives to fees, fines and incarceration, such as community service – NO!

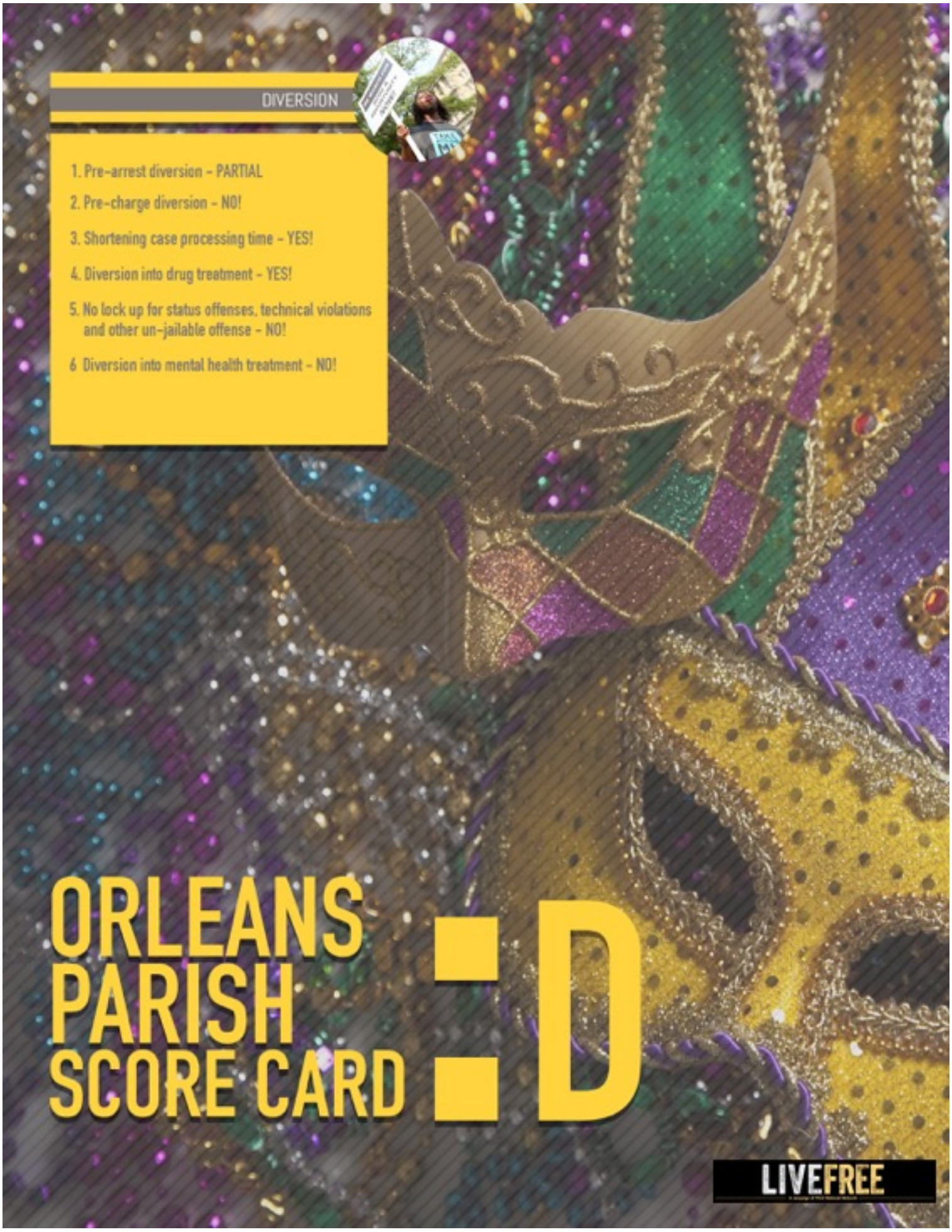
   It is an option but rarely used

5. Replace Money Bail with pretrial risk assessment, release on recognizance and other non-financial conditions – NO!

   Risk assessment given but there is still usually a monetary component that is attached to release

KEEPING IMMIGRANT FAMILIES TOGETHER

1. No local participation in ICE detainers for immigration violations – NO!
2. Municipal IDs – UNDETERMINED


DIVERSION
1. Pre-arrest diversion – PARTIAL
2. Pre-charge diversion – NO!
3. Shortening case processing time – YES!
4. Diversion into drug treatment – YES!
5. No lock up for status offenses, technical violations and other un-jailable offense – NO!
6 Diversion into mental health treatment – NO!
ORLEANS PARISH SCORE CARD :D
LIVEFREE

LOCAL DATA

Jail Population: In 2014 the average daily population in the New Orleans Parish jail system was 2,335, making it the 39th largest jail population among single-jail counties in the United States. The average inmate population per capita is exceptionally large, and in 2014 stood on 6.08 inmates per 1000 residents. The per capita rate reflects a rise of about 20% since 1985, when the parish had 5.05 inmates per 1000 residents. In 2015, 22.6% of all inmates in the Louisiana state prison system were convicted in New Orleans Parish, making the parish the single-largest contributor to the state prison system.

Race and Ethnicity: African Americans account for the large majority of the average daily population in the jail system, with a share of 85.3% in 2014. This percentage has been stable in recent years, and has remained much higher than the percentage of African Americans in the Orleans Parish population, which was 59.5% the same year (a ratio between the jail and the county of 144:1 in 2014). Latino/as and whites have been underrepresented in the parish jail system, compared to their share the total county population.

Unconvicted inmates: During the 2014 ASJ reporting period, there were 1,319 unconvicted inmates in the Orleans Parish jail system, 59% of the total jail population. This is a sharp decline from 2013, when unconvicted inmates accounted for 71.5% of the jail population. Individuals who were incarcerated before being found innocent at trial or having the charges against them dropped spent significant amounts of time incarcerated: 174% of these individuals spent more than a week in jail, 8.6% of these individuals spent more than a month, and 24% spent more than six months incarcerated.

Women: During the 2014 ASJ reporting period, there were on a daily average 196 adult female inmates in the Orleans Parish jail system, accounting for 1.7% of the total jail population in the parish.

RESEARCH OVERVIEW

by Mike Massoglia

The expansion of the correctional system is one of the most dramatic trends in American Society. In 1970 approximately 1 in 1,000 U.S. adults was in prison. **Today, about 1 in every 35 adults is under some form of correctional supervision, with more than 1.5 million adults housed in a state or federal prison, and another 7 million in local jails yearly** (Carson 2014; Guerino, Harrison, and Sabol 2011). While all demographic groups have been affected by the expansion of the penal system**, the impact has been most acute for Black and Latinos, where rates of incarceration are 5-8 times higher than for similarly situated whites** (Petit and Western 2004). The penal system has grown so rapidly it now draws comparisons to the American system of higher education. Each year, approximately as many men graduate college as are released from prison (Snyder and Dillow, 2008), and the size of the incarcerated population (Glaze, 2010) is approximately the same as the enrollment at all American research universities (Snyder and Dillow, 2010).

PICO National Network - Heather Wilson.

Given this rapid expansion and the wide swath the penal system cuts into American society, some argue that a spell of correctional confinement is now a phase in the life course for some subgroups of the population (Western and Petit 2004) and that **correctional policies have created a new "felon" class in American society (Uggen et al. 2006), which comprises over 20 million Americans and fully 1/3 of black adult males.** Importantly this expansion is not a result of a single law but rather a web of federal, state, and local policies and initiatives.

As the entry point to the correctional system, jails play an important role in this expansion. Much like the entire correctional system – prison system, probation, court system, felony conviction – the jail population has grown exponentially, and in any given year millions more individuals pass through jails

than prisons. Yet while the expansion of the correctional system was relatively universal, jails are a unique space in the justice system.

First, whereas prisons generally hold only those convicted of a felony who will be incarcerated for at least a year, jails hold individuals convicted of felonies, misdemeanor, and those who are awaiting trail. **In many county jail systems, the majority of the inmates have not been convicted of any crime.** As a result, stays in jails are much shorter, most commonly just a few days (although as these county reports show, a significant number of people are spending much longer periods of time in jail, in many cases before being released without charges or found innocent). For our purposes, however, perhaps **the most notable difference between jails and prisons is that jails are under the control of local officials while prisons are almost always under the jurisdiction of state or federal officials.**

Correctional policies have created a new "felon" class in American society (Uggen et al. 2006), which comprises over 20 million Americans and fully 1/3 of black adult males.

This locational control comes with benefits and drawbacks. Among the largest drawbacks is the "federal" nature of some polices, such as immigration legislation and polices, that are set by the federal government and operate at the national level. Similarly, most post-conviction sentencing laws and policies are a state and federal issue. Local jails are largely administered at the city or county level, and are sometime left reacting to policies that play out more often at a state and federal level. However, the tighter linkages between jails and local officials come with advantages, in particular because it provides many potential opportunities for intervention. **At the local level, correctional officials have the opportunity to play a greater role in policy decisions or initiatives, initiate change, identify and correct problems or problematic areas and work with others involved in the justice system.**

Given these opportunities, the empirical analysis in this report focuses exclusively on jails and identifies trends as we attempt to turn the tide of mass incarceration. Before we move to the specific jail trends evident, we briefly discuss the data used in our analysis for this Live Free project. **Unless specifically noted, the data are generated by the U.S. Department of Justice Bureau of Justice Statistics (BJS) using a survey instrument called the Annual Survey of Jails (ASJ)**. Using the ASJ instrument, the BJS has historically collected the most detailed data on jail that is publicly available. However, it is not possible to survey each of the over 3,100 jails in the United States annually, and therefore our analysis focuses only on jails defined in the "certainty stratum." These constitute the 250 largest single-jurisdiction jails in the country, and according BJS sampling guidelines, "these jails, and the jail jurisdictions that contain them, are included with certainty in every wave of the ASJ." Given these sampling procedures, we are able to conduct high quality analysis of large US jails over an extended period of time, in this case approximately 30 years.

With few exceptions, the data (percent white, percent African-Americans) presents snapshots on any given day. Data on discharged inmates is most often collected over a one-week period. Finally, given the massive scope of our project – we examined data on 22 large jurisdictions over almost 30 years – it is inevitable that a there are some data complexities and irregularities, such as a jail not reporting on a given data point at some point over the 30 year period. In all cases, we note any inconsistencies. These trends then inform a set of policy recommendations and evaluations.

Key Trends across counties:

While we discuss each county individually, we first briefly discuss some of the themes evident that cut across counties in our analysis. **One of the biggest trends is the striking rise in the percentage of the individuals in jails who are not convicted of any crime, up almost 25% since 1989.** Another striking trend is how quickly individuals churn in and out of jails. Almost 80 percent of the jail population studied is incarcerated for less than a week, and the most frequent spell of jail confinement was 1 day. Als**o striking and consistent with other trends in the literate, the number of women institutionalized has nearly doubled since 1985 and Blacks and Latinos are significantly over-represented in the jail population, a trend that has evident for during the entire period of our study.**

The papers that follow were written by leading experts in the field of criminal justice and each look at specific policy areas under the control of local officials. They lay out best practices that District Attorneys, Sheriffs, Mayors, and City Council Members and County Commissioners can adopt to dramatically reduce the number of people in their jails and under the supervision of their criminal justice systems.

Carson, E. Ann. 2014. "Prisoners in 2013." Washington, DC: U.S. Department of Justice.

Guerino, Paul, Paige M. Harrison and William J. Sabol. 2011. "Prisoners in 2010." Washington, DC: Bureau of Justice Statistics.

Glaze, Lauren. 2010 *Correctional Populations in the United States, 2009*. Govenement Printing Office, Washington DC.

Massoglia, Michael, Glenn Firebaugh, and Cody Warner. 2013. "Racial Variation in the Effect of Incarceration on Neighborhood Attainment." *American Sociological Review* 78:142-165.

Snyder, Thomas and Sally Dillow 2008. *National Center for Educational Statistics: Digest of Educational Statistics* 2007. Government Printing Office, Washington DC.

Snyder, Thomas and Sally Dillow 2010. *National Center for Educational Statistics: Digest of Educational Statistics* 2009. Government Printing Office, Washington DC.

Christopher Uggen, Jeff Manza, and Melissa Thompson, 2006. "Citizenship, Democracy, and the Civic Reintegration of Criminal Offenders." ***The Annals of the American Academy of Political and Social Science*** 605:281-310.

BEST PRACTICES

California Partnership for Safe Communities
By Stewart Wakeling, Daniela Gilbert and Vaughn Crandall,

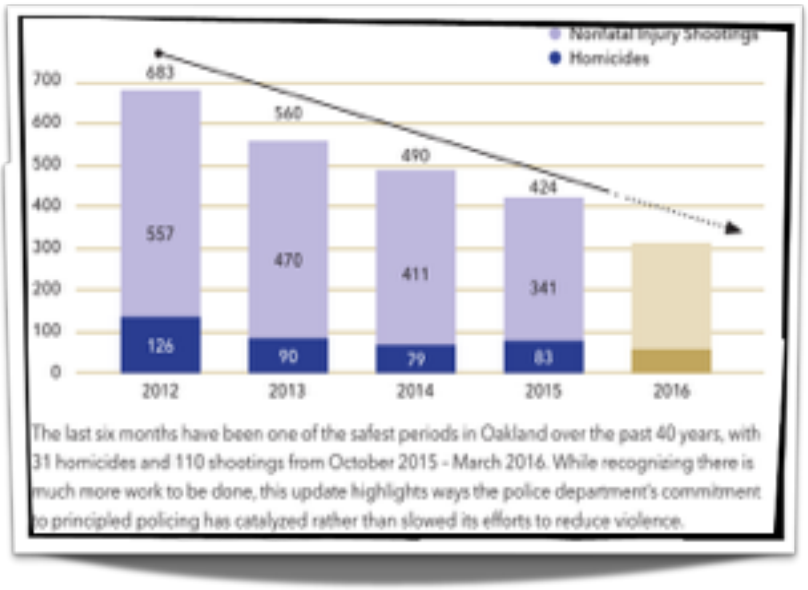
Despite **Oakland's** history of troubled police-community relations and serious violence - it has averaged nearly 110 annual homicides for over four decades - **shootings have declined by a remarkable 40% since the city implemented Ceasefire** in late 2012.

News stories about Ceasefire often describe it as a "carrot and stick" approach that rewards young men who step away from violence while targeting those who don't with intensive enforcement. But **Ceasefire's most distinctive feature involves an alliance of civic, criminal justice and community leaders** communicating a respectful and compassionate anti-violence message to young people at highest risk of violence. In Oakland, these partners embrace procedural justice: treating people respectfully, giving them a voice, avoiding bias in decision-making and demonstrating goodwill.

The payoff is not just fewer shootings. By incorporating procedural justice principles into Ceasefire implementation, Oakland is reducing its reliance on tactics that contribute to over-incarceration, strengthening frayed community-police relations and building bridges to safety and opportunity for young men who otherwise deeply distrust police.

The Ceasefire Approach

Ceasefire combines: (1) analyzing serious violent incidents and trends to identify individuals at highest risk of violence; (2) respectfully communicating the risks associated with violence to those individuals; (3) offering supportive relationships that lead to safety and opportunity; and (4) narrowly focusing enforcement efforts on those individuals that persist in violence.



This approach is strikingly effective. In 2012, the Campbell Collaboration, an interdisciplinary group of social scientists that analyze the best available research on important social issues, published a rigorous review of all evaluations of the Ceasefire approach. The authors concluded that it significantly reduced violence and recidivism in 9 of 10 cities.

The Principles of the Procedural Justice

Researchers have found, repeatedly and across different ethnic groups and communities, that departments that practice procedural justice see increased public support, cooperation and

FACT: Ceasefire's approach helps the department direct resources in ways that are most effective in stopping violence and are justified by facts about risk, rather than irrelevant factors such as race.

compliance with the law. The principles are straightforward: (1) treat people with dignity and respect; (2) give them a "voice," a chance to tell their side of the story; (3) make decisions based on facts, not irrelevant factors such as race; and (4) act in a way that reassures people you have their best interests in mind.

The Mechanics of Procedural Justice

Grounding Implementation in Facts and Evidence Instead of Bias and Unfounded Opinions.

Oakland's police department began its Ceasefire planning by completing a "problem and opportunity analysis" - a systematic examination of hundreds of shootings that produced a comprehensive picture of local violence. The department now also conducts weekly "shooting reviews" during which knowledgeable front-line officers carefully review recent shootings to illuminate who is at risk of participating in violence. These analyses reveal that **a surprisingly small number of people generate most of Oakland's violence – far less than 1% of the city's African-American and Latino young men.**

PICO National Network - Heather Wilson

Investing in analysis has helped the department narrow its focus to individuals most likely to endanger themselves or others. In other words, **the department is better able to direct resources in ways that are most effective in stopping violence and are justified by facts about risk, rather than irrelevant factors such as race**. This has also enabled the department to reduce its reliance on tactics and strategies - such as gang injunctions, curfews and aggressive street-level drug enforcement - that tend to sweep African-American and Latino young men at low risk of violence into the criminal justice system with little or no public safety benefit.

Conveying Respect and Enabling People at Risk of Violence to Share Their Side of the Story.

Ceasefire's primary communication tool is a small meeting - sometimes referred to as a "call-in" - that is typically held in a church or community center. Community, clergy, street outreach and criminal justice leaders gather around dining or conference tables with 10 to 20 young men at high risk of violence.

The **partners share their commitment to making neighborhoods safe and keeping the young men alive and free, while providing them with clear and accurate information about the risks of violence and incarceration**. The tone is serious, but also respectful and compassionate. Speakers avoid lecturing or sermonizing. The overarching theme is one of shared concern for the well-being of the young men as respected members of the community. When time is of the essence, the Ceasefire message is compressed into a one-on-one conversation with a police officer, ideally in partnership with a community or clergy leader, and delivered wherever is most convenient.

These meetings and conversations are designed to provide multiple opportunities for those at risk of violence to ask questions, voice concerns and express opinions. Speakers and participants share a meal following the call-ins, during which the young men are invited to express concerns about the criminal justice system, discuss their experience with social services and share their perspective on the speakers' message.

The **Ceasefire partners offer financial incentives to the young men to participate in more formal listening sessions** - on a one-time basis or as a standing advisory group - during which they gather to discuss and share thoughts and concerns. The police department and Ceasefire partners take this input seriously and often use it to improve program design

Changing the way Police Departments engage with People at Risk of Violence.

Oakland's problem and opportunity analysis showed that the vast majority of individuals at risk of violence had been arrested many times. Their journey through the criminal justice system did little to reduce the risk of further violence.

Ceasefire provides a framework for altering this path. First, it **greatly narrows the department's focus, through analysis, to people at the highest risk of violence.** Second, the department and its Ceasefire **partners engage as many individuals in this relatively small group as possible through respectful and compassionate communication** rather than through enforcement. Third, t**he department works closely with partners to help the young men establish supportive relationships** with outreach workers and case managers.

During the first two months of 2016, Oakland's police department and its partners shared the Ceasefire message with more than 100 young men. The partners met every two weeks, sometimes more often, to strategize about how to connect each individual to supportive relationships. Oakland employs 10 committed, resourceful "relationship-based" case managers who carry small caseloads

consisting only of people at the very highest risk of violence. These case managers concentrate on building a strong rapport with their clients, offering stipends and incentives to build relationships faster, and making three or more in-person contacts with each client every week.

Commitment to Change

Oakland's police department has not only adopted Ceasefire as a program, but has also undertaken deeper organizational changes. These signal its commitment to tackling tough crime problems while stepping away from practices that damage police-community relations and contribute to over-incarceration. Changes have included developing a comprehensive procedural justice training strategy; revising policies and practices that are important to people disproportionately affected by violence and crime so they better reflect the principles of procedural justice; and adopting performance indicators to heighten departmental transparency and accountability.

Meaningful progress in reducing serious violence and strengthening police-community relations is exceptionally hard-won - and, like many other cities, Oakland has much more work to do. But the **principles of procedural justice provide a set of unifying values that are binding Oakland's diverse partners** together for the long-term work needed to make the city safe while ensuring young men at highest risk of violence have a future of hope and opportunity.

PICO National Network - Heather Wilson.

Measuring Good Policing
By Tracey L. Meares is the Walton Hale Hamilton Professor of Law at Yale Law School

What is the best way to think about good policing? To the extent that one thinks that good policing is about keeping people safe through insuring that crime rates remain low, one might measure good policing in terms of how effectively police carry out that particular task. Interestingly, when scholar Tom Tyler testified before the President's Task Force on 21st Century Policing, he noted that while police seemingly have become better and better over time at reducing and addressing crime, **surveys indicating levels of public support for and confidence in police have remained relatively flat over the period of time in which crime rates have fallen precipitously**[1].

If perceptions of trust are grounded in assessments of police effectiveness, this is not what we should be finding. These surveys results raise that question - **if police effectiveness does not drive public trust, what does?**

A possible answer might be police lawfulness. Again, in light of the repeated incidents of quite shocking police brutality – consider for example the tragic death of Walter Scott in North Charleston, SC, who was shot in the back by a white police officer as he fled – we might think that commitment to the rule of law and especially constitutional constraints that shape engagements between the

[1] Taylor, T. (January 2015). Testimony to the President's Task Force on 21st Century Policing. Community Oriented Policing Services, U.S Department of Justice.

public and the police would support public trust. It seems reasonable that the compliance of the police with the law is a critical component of a legitimate state.

There are at least two problems with this potential relationship between levels of public trust and police commitment to lawfulness. **First, it is hard to compile an objective measure of the extent to which police obey the relevant law over time.** Repeated supposedly unlawful incidents shown again and again across social media understandably naturally causes people to question the extent to which police obey the law with respect to its use of deadly force, there is wide scholarly consensus that in the last 40 years or so the level of unlawful police killings has decreased significantly. **Second, the public's perception of the extent to which police actually obey the law is also problematic**. Research suggests that the public is not, unsurprisingly, very good at making these assessments. My own research with Tyler and Gardener demonstrates that public judgments of police legitimacy leading to public trust and confidence are not very sensitive to whether police are behaving consistent with constitutional law in fact[2]. **The public does not define lawfulness or determine sanctioning through the same lens of legality that police and other legal authorities use.**

A Double-Goal Mission

If our goal is to promote of public trust in the police, we must recognize that while both its effectiveness at crime reduction and its lawfulness are relevant determinants. Focusing on only one of the two is not sufficient.

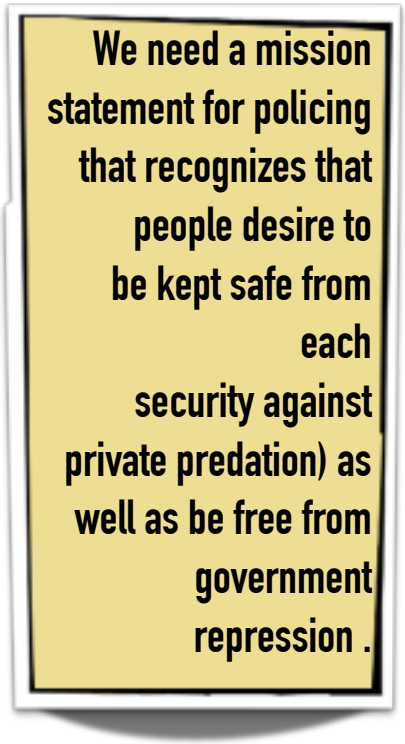
PICO National Network - Heather Wilson.

Rather than focusing solely on police effectiveness in crime reduction or solely on police commitment to lawfulness, **we need a mission statement for policing that recognizes that people desire to be kept safe from each other (security against private predation) as well as be free from government repression (security against government overreach).** We must also recognize that the pursuit of both

[2] Meares, T. L., Tyler, T., & Gardener, J. (2014). Lawful or fair? How cops and laypeople view good policing. *Yale Law School, Public Law Working Paper*.

these goals is not a zero-sum game. We can achieve both with a commitment to policing that makes legitimacy and procedural justice central to its mission.

People's assessments of the fairness of legal actors, institutions and law does not flow from their perception of police effectiveness regarding tasks such as crime reduction or apprehension of wrongdoers. People tend to place much more weight on how authorities exercise power as opposed to the ends for which this power is exercised. Researchers have studied public evaluations of police officers, judges, political leaders, managers, and teachers. **T**he findings are consistent: **conclusions regarding legitimacy are tied more closely to judgments of the fairness of actions than to evaluations of fairness, or effectiveness, of the outcomes**.[3]



Four Dimensions of Fairness

In the social psychological literature, judgments regarding fairness depend primarily upon a model that has four dimensions. First, participation is an important element. People report **higher levels of satisfaction in encounters with authorities when they have an opportunity to explain their situation** and perspective on it. Second, people care a great deal about the fairness of decision-making by authorities. That is, t**hey look to indications of decision-maker neutrality**, objectivity and factuality of decision-making, consistency in decision-making, and transparency. Third, people care a great deal about how they are treated by organization leaders. Specifically, **people desire to be treated with dignity, with respect for their rights and with politeness.** Fourth, in their interactions with authorities, people want to believe that authorities are acting out of a sense of benevolence toward them. That is, people attempt to discern why authorities are acting the way they do by assessing how they are acting. **They want to believe that the motivations of the authorities are sincere**, benevolent and well-intentioned - what we call motive-based trust. Basically, members of the public want to believe that the authority they are dealing with – let's say a police officer – believes that they count. The public makes this assessment by evaluating how the police officer treats them.

[3] Tyler, T. (2004). Enhancing police legitimacy. *The annals of the American academy of political and social science*.

One implication of this model is that when **police generates good feelings in their everyday contacts, it turns out people are also motivated to help them fight crime,[4] and we can expect all of this to lead to lower crime rates in communities**. Additionally, safer communities are not the only important result of law enforcement authorities and other representatives of government treating people with dignity and fairness. Another potential result is healthy and democratic communities. Finally, research shows that this approach leads to policing that is better and healthier for cops of the street.

Implementing Best Practices

The President's Task Force on 21st Century provides a useful guide for implementing best practices regarding good policing.[5] The task force generated 59 recommendations with 92 action items, with each recommendation developed, vetted, and approved by consensus of leaders from law enforcement, police unions, academia, and civil rights organizations as well as community members. Under the title "Policy and Oversight", the report details a number of recommendations concerning use of force, data collection, supervision and accountability. The recommendations relevant include:

Collaboration with communities: Law enforcement agencies should collaborate with community members to develop policies and strategies in communities and neighborhoods disproportionately affected by crime for deploying resources that aim to reduce crime by improving relationships, greater community engagement, and cooperation.

Policies on the use of force: Law enforcement agencies should have comprehensive policies on the use of force that include training, investigations, prosecutions, data collection, and information sharing. These policies must be clear, concise, and openly available for public inspection.

Peer reviews: Law enforcement agencies are encouraged to implement non-punitive peer review of critical incidents separate from criminal and administrative investigations.

Eliminating bias: Law enforcement agencies are encouraged to adopt identification procedures that implement scientifically supported practices that eliminate or minimize presenter bias or influence.

---

[4] Tyler, T. (2010). *Why people cooperate: The role of social motivation*. Princeton University Press. Tyler, T., & Fagan, J. (2008). Legitimacy and cooperation: Why do people help the police fight crime in their communities. *Ohio St. J. Crim. L.*

[5] President's Task Force on 21st Century Policing (May 2015). Final Report of the President's Task Force on 21st Century Policing. Washington, DC: Office of Community Oriented Policing Services.

Eliminate predetermined quotas: Law enforcement agencies and municipalities should refrain from practices requiring officers to issue a predetermined number of tickets, citations, arrests, or summonses, or to initiate investigative contacts with citizens for reasons not directly related to improving public safety, such as generating revenue.

Data collection: Law enforcement agencies should report and make available to the public census data regarding the composition of their departments including race, gender, age, and other relevant demographic data. Law enforcement agencies should also be encouraged to collect, maintain, and analyze demographic data on all detentions (stops, frisks, searches, summons, and arrests). This data should be disaggregated by school and non-school contacts.

Avoid using provocative tactics: Law enforcement agencies should create policies and procedures for policing mass demonstrations that employ a continuum of managed tactical resources that are designed to minimize the appearance of a military operation and avoid using provocative tactics and equipment that undermine civilian trust.

Civilian over-sight: Some form of civilian oversight of law enforcement is important in order to strengthen trust with the community. Every community should define the appropriate form and structure of civilian oversight to meet the needs of that community.

Seeking consent: Law enforcement officers should be required to seek consent before a search and explain that a person has the right to refuse consent when there is no warrant or probable cause. Furthermore, officers should ideally obtain written acknowledgement that they have sought consent to a search in these circumstances.

Identification procedures: Law enforcement agencies should adopt policies requiring officers to identify themselves by their full name, rank, and command (as applicable) and provide that information in writing to individuals they have stopped. In addition, policies should require officers to state the reason for the stop and the reason for the search if one is conducted.

LGBTQ and transgender populations: Law enforcement agencies should establish search and seizure procedures related to LGBTQ and transgender populations and adopt as policy the recommendation from the President's Advisory Council on HIV/AIDS (PACHA) to cease using the possession of condoms as the sole evidence of vice.

Preventing discrimination: Law enforcement agencies should adopt and enforce policies prohibiting profiling and discrimination based on race, ethnicity, national origin, religion, age, gender, gender identity/expression, sexual orientation, immigration status, disability, housing status, occupation, or language fluency.

Implementing Justice Alternatives at the Local Level
By Kaitlin Kall, Program Associate, Vera Institute of Justice

PICO National Network - Heather Wilson.

There are more than 3,200 jails across the United States. Unlike prisons, which are operated on the State or Federal level, the **majority of jails are run by counties or cities**; most operate at least one facility. While state and federal laws certainly impact jail population trends, local policies and procedures greatly influence how many enter a county's jail and how long they stay. Fortunately, this means that jurisdictions can make changes to their criminal justice systems and reduce the overuse of their jails without waiting for legislative or state-level reforms.

This brief highlights six points along the trajectory of a criminal case that effect jail admissions and length of stay: **arrest, charge, pretrial release, case processing, disposition/sentencing and post-disposition.** At each of these decision points, law enforcement, district attorneys' and public defenders' offices, judges, jail administrators, probation departments and other criminal justice personnel can alter policy and practices in ways that reduce their community's overreliance on jail. Below we describe each decision point along with examples of jurisdictions that have undertaken meaningful reforms.

Entry Point: Arrest

Arrest is the entry point into the criminal justice system. After an encounter, a law enforcement officer must make the decision whether to make an arrest, issue a summons, refer to local services or a diversion program, or give a verbal warning. Some jurisdictions have expanded the types of offenses that can be subject to a summons rather than an arrest. **Many police departments have partnered with community services in order to expand their response options**.

- Intended to improve both urban quality of life and outcomes for routine offenders, Seattle (WA) established the **Law Enforcement-Assisted Diversion (LEAD)** program. I**nstead of booking an individual suspected of a drug and/or prostitution crime into jail, officers can offer him or her the opportunity to be diverted to**

community-based wrap-around services which are overseen by a case-manager. Officers are also empowered to refer residents in need of services to a case-manager via an informal interaction called a "social contact," avoiding an arrest altogether. Two recent evaluations of the program have shown positive results; **LEAD participants were found to have spent 39 fewer days in jail** than a control group and had 87% lower odds of being incarcerated in prison at least once[6].

- Under the **Bexar County Jail Diversion Program,** law enforcement officers in the San Antonio, TX area have multiple means for responding to citizens with mental illness. Officers are encouraged, for example, to take individuals appearing to have mental illness to **Crisis Care Center (CCC), a ten bed drop-in facility for those in crisis, instead of arresting them.** Patients can stay at the facility up to twenty-three hours and are re-started on medication and provided physical and mental health care. If staff are not able to stabilize the individual, he can be transferred to a longer-term treatment facility rather than to jail. **The county estimates the CCC alone saves $5 million annually due to decreased jail usage.**

Pressing Charges

Prosecutors make the decision to formally charge a person with a crime and decide which charges to file. Prosecutors hold tremendous discretion in this process, which means that if available, District Attorneys can take advantage of prosecutorial alternatives such as pre- and post-charge diversion.

- Known as Early Intervention, **Milwaukee County District Attorney's Office operates two prosecutorial diversion programs which assign offenders to six months of community-based treatment and programming in lieu of pretrial**

[6] Collins, S. E., Lonczak, H. S., & Clifasefi, S. L. (2015). LEAD Program evaluation: criminal justice and legal system utilization and associated costs. Harm Reduction Research and Treatment Lab, University of Washington, Harborview Medical Center.

detention and typical criminal justice case processing[7]. The Diversion program offers lower-risk individuals (as determined by an evidence-based screening tool) diversion before charges are officially filed. Those who successfully meet the conditions of their release will not be subject to a criminal charge on their records. Milwaukee's Deferred Prosecution Agreement Program (DPA) serves those measured to be at medium to high-risk of re-offense. Participants enter a guilty plea and sign an agreement, but the judgment of conviction is deferred upon successful completion.

- In 2011, the city of **San Francisco's District Attorney established ten Neighborhood Courts, which offer true alternatives to prosecution[8]. Instead of filing charges, prosecutors can refer individuals facing misdemeanor charges to these "courts"**, which are staffed by community volunteers trained in restorative justice practices. Defendants and volunteers discuss harm done to the community and defendants may be given community service or asked to pay restitution. If the participant is compliant, prosecutors will dismiss the case. Showing great success, the neighborhood court model is being replicated in Los Angeles and Yolo County, CA.

Pretrial Release

Pretrial release involves a series of decisions affecting the release of a defendant before final disposition, including whether to release, conditions of release such as financial bail or pretrial supervision, and the response to violations of pretrial supervision. **In some jurisdictions the best practice is considered to be a pretrial services agency assessing defendants' risk levels, which than informs these decisions.** It is typically a judicial officer who makes the pretrial release and bail decision. However, in courts where a bond schedule is in place, cash bail is set by charge, and the defendant's ability or inability to pay the bond determines whether or not he must stay in in jail pending trial.

- **Mesa County (CO) undertook reforms to improve its pretrial release process by implementing an evidence-based pretrial risk assessment too**l, moving away from cash bail, and increasing the use of release on recognizance and other non-financial conditions of release. **Judges, who now have more information from which to make their pretrial release decisions, went from releasing 30% of defendants on their own recognizance (that is, without paying a bond) in 2011 to releasing 60% of defendants on their own recognizance in 2015.** These reforms saved the county 95,630 jail bed days in 2012 alone. The jail's pretrial population dropped 27% from June 2013 to November 2014, while maintaining impressive safety and appearance rates.

- **Research shows that jurisdictions that implement court date reminder systems can expect to reduce failure-to-appear (FTA) rates**, which often serve as the motivation for detaining people pretrial. After establishing the Court Appearance Notification System in 2006, Multnomah County, OR

[7] Milwaukee County District Attorney's Office (2014). Milwaukee County early intervention programs.

[8] City and County of San Francisco District Attorney, Neighborhood courts.

realized a 37% reduction in FTAs using and automated calling system.[9] This resulted in a net cost-avoidance to the criminal justice system of as much as $264,000 in just six months of operation and substantially reduced minority over-representation in failure to appear rates.[10]

Case Processing

Case processing refers to the series of decisions that get made along the trajectory of the case, from arraignment to disposition and sentencing, including the time standards for each, docketing options and specialty courts.

- Within just a year of being built in 2002, Bernalillo County's (NM) jail become overcrowded and continued to remain so for the next ten years. In 2012, consultants identified that a major driver was long case processing times for felony defendants. The Second Judicial Court undertook major efforts to speed up case processing times for this population, which included clearing a backlog of existing cases. The courts also adopted a differentiated case management strategy, which places cases on differentiated tracks (expedited, standard, or complex) based on their estimated complexity. **Impacts of these and other reforms were immediate; the jail population went from 2,667 in 2012 to 1,099 – a 40% decrease in just three years, achieving the lowest population since opening**.[11]

- Prior to reforms, a defendant's misdemeanor and felony charges in Orange County Superior Court (CA) were processed in separate courts, increasing the number of mandatory court dates and associated costs.[12] Intending to reduce court dates and court backlogs and FTA rates, **the Court implemented a system in which a defendant's cases are "packaged" and heard by one judge. This new system was found to reduce the expenditure of court resources and improved rates of probationer success**.

Sentencing and Post-Conviction

After disposition - when a judge or jury has found a defendant guilty or, most commonly, once a plea is accepted - the judge determines a sentence, which may involve incarceration, community supervision or other alternatives. **The post-conviction phase includes time served in prison, jail and/or under correctional supervision in the community, as well as violations of supervision.**

- The Allegheny County (PA) Mental Health Court (MHC) offers justice alternatives for offenders diagnosed with a mental health disorder. In addition to offering pre-trial diversion, MHC serves as an alternative-to-jail program. Instead of being sentenced to jail or prison, MHC participants

---

[9] Nice, M. (2006). Court appearance notification system: process and outcome evaluation. Multnomah County, OR: Budget Office.

[10] Ibid.

[11] McKay, D. (March 15, 2016). Jail population plunges. Albuquerque Journal.

[12] Garofalo, C. (2011). The impact of coordinating multiple criminal cases in the multiple court sites of the Orange County Superior Court. Orange County, CA: Institute of Court Management.

are placed on probation and referred to community based treatment and other support such as housing services. **An evaluation by RAND Corporation found that participation in MHC significantly increased access to mental health treatment, decreased jail time for participants, and resulted in a "dramatic decrease in jail costs"**, as the costs of mental health treatment and other community services were offset by savings in jail expenses.[13]

- From 2008 to 2015, Hampden County's (MA) jail population declined 30%, in part due to taking a public health approach to jail reentry. Detainees with mental and/or physical health issues are assigned to a physician and case manager upon release and are reminded of upcoming appointments.[14] **An evaluation by the National Institute of Corrections found that participants in the jail's community health model reported significant declines in both physical**
- **and mental health problems, as well as substance use.[15]**

No single decision-point or decision-maker solely contributes to the overuse of jail. But counties and cities can make significant reductions in their jail populations, as proven by jurisdictions throughout the U.S., by implementing multi-pronged, cross-agency local reforms that result in the wiser use of jail detention.

[13] Ridgley, M. S., Engberg, J., Greenberg, M. D., Turner, S., DeMartini, C., & Dembosky, J. (2011) Justice, treatment, and cost: an evaluation of the fiscal Impact of Allegheny County mental health court. Santa Monica, CA: RAND Corporation.

[14] Hampden County's public health model was adapted as the Community Oriented Correctional Health Services (COCHS) a nonprofit that promotes partnerships between local jails and community health organizations.

[15] Hammett, T. M., Roberts, C., Kennedy, S., Rhodes, W. (2004). Evaluation of the Hampden County public health model of correctional health care. Abt Associates: Cambridge, MA.

Monetary Sanction Policy Statement
By Alexes Harris, Associate Professor of Sociology, University of Washington

Those accused of breaking the law, even with minor offenses, pay an increasing share of the costs of the criminal justice system. They do so through a myriad of financial charges: fines and monetary penalties of course, but also through court user fees, surcharges for collections or partial payments, and interest charges on outstanding penalties. **More and more, the United States' systems of justice mandates that people literally pay for their crimes in addition to going to jail or prison.**

Nationally, all states allow for the imposition of fines on convicted defendants. In addition, states also allow criminal defendants to be charged fees. In Pennsylvania, for example, there are 2,629 types of monetary sanctions. Of allowable Legal Financial Obligations (LFOs), only seventy-nine are fines and 2,371 (or 90%) are fees and costs. The remainder comprises various criminal justice-related fees.[16] Some state statutes allow for "actual court costs" and fees related to the prosecution of the defendant to be sentenced. **The fees can include charges related to court and prosecution time, juries and witnesses, and warrants, as well as criminal laboratory evaluation costs.** These include the cost of a public defender, court costs including paperwork and filing fees, probation supervision fees, and incarceration costs.

[16] Ruback, R. B., Shaffer, J. N., & Logue, M. A. (2004). The imposition and effects of restitution in four Pennsylvania counties: Effects of size of county and specialized collection units. Crime & Delinquency.

These costs are not only imposed in serious criminal cases, but also for traffic tickets and misdemeanor violations. For example, California imposes a 20% surcharge on all traffic tickets, an additional 100% State Penalty Assessment surcharge, a 90% County Penalty Assessment surcharge, a 50% State Court Construction surcharge, and a DNA Identification Fund Penalty Assessment surcharge of 40%. Non-payment of traffic tickets frequently results in license suspension (temporary loss), and revocation (permanent loss for a period of time). A recent study found that 4 million Californians (17% of adults) are driving on suspended licenses related to failure to pay or appear. **Driving with a suspended license frequently results in incarceration, particularly for those living in communities that are heavily surveillanced by police**.

Washington State has a very similar system imposed on people convicted of felonies. Under current law, fines and processing fees are levied on juvenile and adult defendants charged with misdemeanors and felonies. Every adult felony defendant in Washington state is charged a minimum of $600 per conviction ($500 for victim penalty assessment and $100 for a DNA extraction). Additionally, people who are convicted can be charged for their court processing (approximately $200), the cost of their public defenders ($450-$1,200, ranging by county), costs related to requesting a jury ($125-$250) and the sentence of incarceration ($50 and $100 per day for prison and jail respectively). Consequently, defendants statewide are charged on average $1,300 per felony conviction in addition to other sentences as jail, community service or supervision.

More and more, the United States' systems of justice mandates that people literally pay for their crimes in addition to going to jail or prison.

Research in Washington State has found that indigent defendants are regularly brought to court via court summons and even arrest for non-payment.[17] The system of monetary sanctions has been imposed regardless of people's ability to pay – even homeless people and people with mental illness or drug and alcohol addictions are assessed these costs. Furthermore, people are charged 12% interest on all fiscal penalties, plus a $100 annual collection surcharge. **For the vast majority of already poor, unemployed and under-educated people who make contact with our criminal justice system, paying these fiscal penalties becomes a permanent punishment**.

It is important to remember whom the majority of people are who make contact with our systems of justice. **African Americans, Native Americans, and Latinos are disproportionately convicted and incarcerated, and the use of monetary sanctions is disproportionately borne by them.** Not only are African Americans, Latinos and Native Americans disparately arrested, prosecuted, convicted and incarcerated at higher rates, it also

[17] Harris, A. (2016). A Pound of Flesh: Monetary Sanctions as a Punishment for the Poor. New York: Russell Sage.

appears that people of color are disparately sentenced to fines and fees. Research in Washington State has found statistically that Latinos receive higher fines and fees compared to non-Latinos with similar legal records and current offenses.[18] [19]

A key issue that makes solving the problem of monetary sanctions hard is that while state legislatures set policies and statutes at the state-level, varying jurisdictions from counties to the municipalities interpret these policies and statutes and apply them differently. **In order to better protect the constitutional rights of indigent defendants, it is not enough for statutory changes to be implemented at the state level – local jurisdictions should also modify their informal and formal policies.**

PICO National Network - Heather Wilson.

What is and What Isn't Working

As monetary sanctions have recently gained public and academic attention, there have been few attempts at addressing the problem. **One successful initiative so far has been the creation of bench cards by state supreme courts to their sentencing judges**. **These cards outline relevant state statute and case law on applicable monetary sanctions and criteria to use in the assessment of costs, the evaluation of ability to pay, and the evaluation of willful non-payment**. Cards also outline alternatives to fines and fees and incarceration (e.g., community service).[20]

There has been some legal movement in providing protections for poor defendants in state courts. on March 12, 2015, **Washington State Supreme Court made a critical decision** about the way judges should impose the state's system of monetary sanctions. In State v. Blazina, the court found that sentencing judges must conduct an "individualized inquiry into the defendant's current and future ability to pay before the court imposes LFOs".[21] The opinion relied heavily on research highlighting the disproportionate negative effects of the system of monetary sanctions on poor defendants and the deleterious consequences for living with debt. It allowed judges to waive non-mandatory and non-restitution fines and fees if a defendant is homeless or unemployed. **The decision recognizes the undue financial burden placed on**

---

[18] Harris, A., Evans, H., & Beckett, K. (2011). On cash and conviction: monetary sanctions as misguided policy. *Criminology and Public Policy special issue on mass incarceration*.

[19] Harris, A., Evans, H., & Beckett, K. (2011). Courtesy stigma and monetary sanctions: toward a socio–cultural theory of punishment. *American Sociological Review*.

[20] See for example Washington Association of Criminal Defense Lawyer - LFO Bench and The Supreme Court of Ohio - Collection of Fines and Court Costs in Adult Trial Courts.

[21] Washington State Supreme Court (2015). State of Washington v. Blazina. No. 89028-5 (consol. w/No. 89109-5).

some individuals, and acknowledged that courts should not focus on generating revenue to fund the court system, as well as the "problematic consequences" it brings for community reentry such as employment, housing and finances.

Legislators in Washington State have attempted to take important steps toward addressing laws that saddle already disadvantaged people with financial debt. The state House of Representatives passed HB 1390 in both 2014 and 2015 legislative sessions, which dramatically reforms Washington's system of LFOs. The proposed legislation would, among other things, eliminate interest accrual on the non-restitution portions of LFOs, prevent courts from imposing them on indigent defendants, establish standards for what constitutes a willful failure to pay, and prevent people to be charged twice for a DNA extraction.

At the county level jurisdictions have chosen not to impose additional costs to poor defendants who are unable to fully pay their monetary sanctions. Snohomish County, Washington states that it does not impose "convenience fees" for payments made with credit cards. Benton County, Washington no longer incarcerates non-paying district court debtors in lieu credit towards their debt in what is a practice commonly known as "sitting out fines and fees." And, the King County Superior Court in Washington has decided not to use jail as a punishment for debtors failing to pay their non-restitution monetary sanctions.

General Guidelines for Eliminating LFOs

First, states should eliminate all non-restitution fines, fees, surcharge, assessments, interest and collection charges in state superior criminal courts. Defendants convicted of serious felonies are already being held accountable with an array of punishments including incarceration, probation, community service, electronic home monitoring, victim classes, not to mention the felony conviction itself and related collateral consequences. **With the elimination of these monetary sanctions defendants could focus on making payments towards restitution and helping to restore the lives of their victims.**

Second, all justice related debt should be collected as a civil matter. **Criminal sanctions for non-payment such as warrants and incarceration should never be used as strategies to encourage payment.**

Third, **achievable punishment schemes should be created that punish poor defendants for their offending and allow them to be held accountable.** Such practices could include the following. It is important to note that if changes can't be made immediately at the State level, local jurisdictions have the authority to structure policy changes as suggested below - within the confines of the state law - at their discretion.

Review of Best Practices

Amnesty Days. In 2015 the California legislature passed a bill to implement an amnesty program for Californians who owed unpaid traffic tickets[22]. Drivers received fifty to eighty percent discounts on

[22] California Department of Motor Vehicles, Traffic Tickets/Infractions Amnesty Program.

PICO National Network - Heather Wilson.

tickets that were owed prior to January 1, 2013. Debtors were also offered installment plans in attempts to help them complete their payments. For drivers who lost their licenses because they were unable to pay their fines will become eligible to have them reinstated.

Elimination of Money Bail. Many local jurisdictions have already started or are considering the elimination of cash bail. In most jurisdictions, people who arrested are told by the court that they must "post" bail in order to be released from jail. If they are unable to pay a certain percentage of the bail in cash, they are required to await their adjudication behind bars. Many miss work, are unable to care for children, and even lose their jobs while awaiting trial. Furthermore, research has shown that people who are jailed prior to adjudication are convicted at higher rates and receive more punitive sentences compared to people who remain in the community prior to their adjudication.[23] **The system of money bail creates an obvious two-tiered system of justice where those with means have the ability to remain in their homes and communities, while the poor face indefinite incarceration.** Because of this apparent inequality many states are considering ending the practice of money bail. Several states have already implemented new risk assessment tools to create more fair practices. Washington D.C. has led the way in remodeling its bail system, with money bonds deemed illegal and approximately 85% of all arrestees are released prior to adjudication.[24]

Day Fines. Traffic fines and municipal-level citations could be calculated according to a day-fine system. Many countries around the world use this system in lieu of incarceration. Within such systems, fines are calculated by multiplying the average daily wage of a defendant prior to arrest with a score assigned to the convicted offense. An amount is generated that is both proportionate to the person's ability to pay and to the seriousness of the offense committed.[25]

---

[23] Philips, M. T. (2008). Pretrial detention and case outcomes, (Brief). NYC Criminal Justice Agency.

[24] Keenan, C. (2013). We need more bail reform. Pretrial Services Agency for the District of Columbia.

[25] Zedlewski, E. W. (2010). Alternatives to custodial supervision: the day fine. National Institute of Justice.

Credit System. **Another direction courts could take is the creation of a credit program for indigent defendants to make payments towards their debt.** Under this system judges would credit defendants' justice debt accounts when they show progress. For example, a judge in Washington State can give defendants $2,000 credit towards their debt once they have obtained their GED or high school diploma. Other types of credits could include $500 a month "payment" for regularly attending narcotics or alcoholics anonymous meetings, or for maintaining a regular mental health regime with a licensed practitioner. Such a credit program can create a realistic system of accountability in which indigent defendants can be held accountable for their transgressions, while becoming more productive citizens through the process.

Safety Nets. States should identify ways to prioritize public safety. They can do so by **developing safety nets to support the underlying problems of many who come into contact with systems of justice**. Law enforcement in Seattle and King County (WA) have implemented a transformative pre-arrest diversion program called LEAD (Law Enforcement Assisted Diversion). LEAD allows Police to divert "frequent fliers" or non-violent offenders who make regular contact to drug and alcohol or mental health treatment, and provide them with vouchers to clean and sober housing, educational programs and vocational certificates. Doing so addresses the vary problems that lead people to repeatedly encounter our criminal justice system, and changes their lives in a healthy and productive manner.

Re-entry Programs. Along similar lines, **re-entry programs should be designed to assist people released from incarceration.** In addition to a bus ticket and $40, programs could provide people with state issued identification so they can seek legal employment and support resources. Programs could help people access clean and sober housing and educational programs, and needed mental and physical health and substance abuse treatment programs. Research suggests that these types of programs reduce recidivism.

Identifying Safe and Just Prosecution
By Taylor Pendergrass, Criminal Justice Policy Expert and Litigator

Defining "Safe and Just Prosecution"

"Safe and Just Prosecution" is a forward-looking vision for prosecutorial practices. "Safety" means focusing prosecutorial resources on interventions that make the community safer based on evidence and the actual experience of community members. "Justice" means holding people who commit serious harm to their communities accountable in a transparent manner that prioritizes the needs of crime victims and communities.

This brief is a first attempt to respond to the need for a framework to identify the features of "good prosecution" that all prosecutors should be striving to achieve. It lays out a vision for Safe and Just Prosecution, discusses why prosecutors have fallen short of this vision, and poses five questions that can be used to evaluate current practices.

A "safe and just" prosecutor exercises discretion to determine which issues are most productively dealt with inside the criminal justice system, and which ones should be steered out of it. Most prosecutors, however, do not approach

their work using this framework. Instead, they aggressively enforce all laws on the books, assuming that it will automatically produce safety. This culture of competitive punishment, where prosecutors seek the most severe penalties allowed under the law, has had severe consequences for communities most impacted by crime and incarceration. It has done little to improve safety or to achieve solace for crime victims, whose needs too often are not served. To understand why prosecutors have gotten it so wrong and what they should be doing to fix it, we need to start by looking at the big picture.

More Punishment does not Equal More Safety

The criminal justice system suffers from two fundamental problems. First, the system tries to do far too much. **Many problems, such as substance use disorders, mental illness, homelessness and poverty, get dumped into the criminal justice system, which does not have the tools to solve them**. The health system and other social services are better equipped to address these issues. Second, the things the system should be focusing on doing well, it does all wrong. For the small number of serious problems that may be appropriate for the criminal justice system, **we have relied far too much on a single approach – very severe punishment – even though evidence consistently shows that adding years in prison does not improve safety.**

Often defendants plead guilty to charges just so they can get out of jail. Many cases that used to get charged as misdemeanors (that carry lower penalties) now get charged by prosecutors as felonies with much more serious consequences.

Prosecutors have driven both of these trends. Most prosecutors have shown a single-minded focus on severe punishment that has ballooned the number of people involved in the criminal justice system without addressing many core safety needs. For example, many prosecutors agree to press charges in almost all cases where there are arrests, even though they are not required to do so. Prosecutors commonly request that judges set bail amounts that defendants cannot pay, keeping people in jail simply because they are poor.[26] **Often defendants plead guilty to charges just so they can get out of jail. Many cases that used to get charged as misdemeanors (that carry lower penalties) now get charged by prosecutors as felonies with much more serious consequences.**[27] In state legislatures, prosecutors often lobby against any changes to the criminal justice system, even if those reforms are safer, more humane, and less costly than current practices.

[26] Pinto, N. (August 13, 2015). The Bail Trap. New York Times.

[27] For a good primer on this phenomenon see interview with John Pfaff: Neyfakh, N. (February 6, 2015). Why are so many Americans in prison? A provocative new theory. Slate.

These practices have led to three major safety failures. First, p**rosecutors' failure to hold police accountable by rejecting unlawful or unwise arrests has enabled racially biased and unconstitutional policing**. Second, pr**osecutors' over-reliance on incarceration does not improve the safety of communities and can actually have a negative impact**.[28] Third, by prosecuting nearly all cases that come in the door, **prosecutors have overwhelmed the courts and packed prisons, preventing a needed focus on the most serious problems.**

More Punishment does not Equal More Justice

Achieving justice requires responding to crime victims and communities, and taking feedback to improve their decisions. Because prosecutors refuse to collect or share data about their practices, however, there is little or no check or review their decisions. In addition, because so few people pay attention to prosecutor elections, prosecutors have become isolated from the community and are under little pressure to examine the consequences of their practices.

This closed-off and unaccountable environment thwarts justice. Most victims need services to help them recover from their trauma, restitution for their injuries, and want the system to reduce the chance that what happened to them will happen to someone else. **A very long prison sentence does not help achieve these goals, and is not what most crime victims want.**[29] Similarly, most communities want prosecutors to effectively address the most urgent problems in their neighborhoods, not lock up their neighbors for every conceivable violation of the law.

Prosecutors' resistance to transparency and improving decision-making allows young prosecutors to act freely on their most punitive impulses, and making it hard to detect and address racial bias. Overall, this insular and punitive culture dehumanizes people, leading to a mentality that seeks a conviction at any price and enables the cavalier use of severe incarceration, with little regard for the how degrading it is for individuals or for the havoc it wreaks on communities.

Five Big-Picture Questions to Evaluate Prosecutorial Practices

Reformers should focus on five major questions when evaluating whether a prosecutor is going to make a positive impact toward safe and just prosecution.

---

[28] Even short stints in jail while awaiting trial can harm safety and health. In addition, incarceration has a limited deterrence value, and more severe punishment in the form of longer prison sentences does not increase safety. Furthermore, it is clear that for many low-risk crimes, severe punishment may exacerbate unsafe behavior, while community-based options are more effective and humane in reducing these threats. Open Society Institute, Pretrial Detention and Health: Unintended Consequences, Deadly Results (2011); Wright, V. (2010). Deterrence in Criminal Justice: Evaluating Certainty vs. Severity of Punishment. The Sentencing Project; Porter, N. D. (2016). Expanding Public Safety in the Era of Black Lives Matter. University of Miami Law Review.

[29] This groundbreaking survey from Californians for Safety and Justice documents the real needs and desires of crime victims.

1. **Is there an Actionable Commitment to Culture Change?** It will take a major culture change among the staff of prosecutors' offices to make meaningful reform stick. Before getting tangled in the weeds of any particular policies, focus on culture. The prosecutor should have a long-term vision and a well-developed plan to bring about systemic cultural change throughout the organization. This vision should be supported - but not led - by new policy initiatives. This vision must be firmly grounded in an acknowledgement of what the profession has gotten wrong in the past and the consequences of those failures. **Line-level prosecutors will never reverse decades of practices causing racial disparities without understanding and confronting the harm past practices have caused.**

2. **Is the Prosecutor Genuinely Engaged with Crime Victims and Communities?** Almost any prosecutor's office will claim it serves victims and communities. To evaluate whether this is true, dig deeper. With regard to victims, see whether the victim services unit is well staffed by a team that has the training and experience to serve the full range of victims. S**taff should be making continuous efforts to understand what victims seek, and those desires should be taken into account in the way the case is prosecuted.** Discrimination against victims should be clearly prohibited, regardless of whether the victim is believed to be involved with a gang, is an undocumented immigrant, or has a prior conviction. **Hallmarks of genuine engagement will include the dedication of high-level staff to community outreach**. It should include branch offices and periodic open meetings in underserved neighborhoods. The communication must be a two-way street. Prosecutors should develop initiatives that respond to community priorities and report back on progress.

3. **What is the Prosecutor Doing to Reduce the Number of People Involved in the Criminal Justice System? The most effective approach is to reduce the number of people who ever become involved with the criminal justice system in the first place**, a goal the prosecutor should be pursuing in two ways. First, preventative programs - **programs that reduce harmful behavior without any law enforcement involvement – should be wide-reaching and a major feature of a prosecutors' agenda (and budget)**. Examples include after-school and early childhood

education programs, "greening" high incarceration communities, quality health care, targeted employment programs, and better street lighting, all of which have been shown to improve safety.[30] Second, **prosecutors must carefully screen cases, and reject or divert cases that do not warrant prosecution.** Rejecting charges like drug possession and vagrancy that reflect social problems more safely dealt with through social services and/or that the community thinks should not be prosecuted, creates strong pressure to expand and properly fund those services. The prosecutor should also actively support the creation of more diversion options, and prosecutors should be able to identify active partnerships with community groups and social service agencies to this end. Similarly, rejecting charges based on an unconstitutional or unwise arrest puts pressure on police to follow the law and respond to community priorities.

4. **What is the Prosecutor Doing to Reduce Overly Severe Punishments?** Prosecutors should focus on three areas to reduce overly severe punishments. First, **elected prosecutors should strictly control how line prosecutors charge cases**. Research suggests a major driver of mass incarceration are increasingly severe initial charging decisions.[31] Once overly severe charges are filed, the die is cast—it forces individuals (and judges) to accept plea deals with longer prison terms. Second, pr**osecutors should agree to release almost all arrestees pending trial,[32] and reduce the number of people too poor to pay cash bail to zero**. Even a few days of pretrial detention can increase harmful behavior and be disastrous for employment, family relationships, and overall physical health.[33] Nonmonetary conditions and unsecured bonds have proven just as effective (and even more so) in securing an individual's appearance in court.[34] Third, **prosecutors should be leading the way in increasing the office's use of alternatives to incarceration and much shorter prison sentences**, including for crimes of violence, where in many cases safer and more effective solutions exist. They should also be championing sentencing reforms across-the-board.[35]

---

[30] Porter, N. D. (2016). Expanding Public Safety in the Era of Black Lives Matter. University of Miami Law Review.

[31] John Pfaff has been pioneering this work, see Note 2 above. For a more in-depth perspective, check out this blog entry The Centrality of Prosecutors in Prison Growth.

[32] As a benchmark, the elected prosecutor should be releasing about 90% of arrestees to the community pending trial, which is the release rate in the District of Columbia, which has safely implemented meaningful pre-trial justice reforms.

[33] Wright 2010

[34] Jones, M. R. (2013). Unsecured Bonds: The Most Efficient Pretrial Release Option. Pretrial Justice Institute, Washington D.C.

[35] A group of prosecutors is starting to get behind sentencing reform at the federal level. See Top Prosecutors Advocate Sentencing and Corrections Reform as Good Conservative Policy. US Justice Action Network.

5. **Does the Prosecutor Operate with Transparency, Integrity and Accountability? Prosecutors should be as transparent as possible in their decision-making.** For example, the community should know what percentage of police charges they are accepting and deciding to file cases on, and what factors they are using to make those decisions. Prosecutors should gather data to evaluate outcomes. They should form partnerships with research institutions to expand their ability to analyze their own practices.[36] **All standards and data should be publicly available on a website portal or upon request.** The data should include all the key areas discussed in this brief - how many crime victims obtained services; how many cases were diverted or rejected; how many people are detained pre-trial and how many on cash bail; how many people are sentenced to alternatives to incarceration, or prison terms well below the maximum possible under state law.

   Prosecutors must also acknowledge that "safe and just" outcomes will be impossible to achieve unless there is integrity in the process and public trust in the outcome. Policies should be in place to reduce as much as possible the risk of a wrongful conviction, including open discovery policies and evidence-based investigatory methods. Policies should be in place to detect and correction structural racism, including mandatory training on racial bias.[37]

   Elected prosecutors should also openly acknowledge that there is far too little accountability in their field.[38] They should embrace additional accountability measures that will increase the certainty of outcomes, ensure ethical behavior and strengthen community trust. Prosecutors should support the creation of community-based oversight boards in their district, much like those for police. Similarly, they should also support the creation of state-level independent oversight bodies. With regard to internal accountability, no prosecutor should ever be afraid to take a second look at convictions to ensure that a just result was achieved, and where error is uncovered, there must be an appropriate response to correct the error and prevent future mistakes

[36] Examples of such partnerships include VERA's Prosecution and Racial Justice Program (PRJ) and the Expert Assistance of the Center for Court Innovation.

[37] The Department of Justice just announced it would require racial bias training for all of it's employees, including all DOJ prosecutors.

[38] Sapien, J., & Hernandez, S. (2013). Who Polices Prosecutors Who Abuse Their Authority? Usually Nobody. ProPublica

The School to Prison Pipeline
By Paul Hirschfield, Associate Professor of Sociology, Rutgers University

The "School to Prison Pipeline" (STPP) is a metaphor that encapsulates the various ways in which schools facilitate entry into the juvenile and adult justice systems. Students who are suspended, expelled or drop out of school face an elevated risk of arrest and incarceration.[39] Because juvenile arrests and court involvement promote school dropout[40], school-based arrests and court referrals are also often included among the conduits from schools to prisons.

This metaphor, which subsumes various school and criminal justice practices under a larger process of criminalization, has promoted collaboration between school reformers and criminal justice reformers. Reform campaigns have targeted all level of government – school district, municipal, county, state, and federal - and all components of STPP. **The following brief focuses on reforms that can be initiated locally to reduce suspensions and school-based police and court referrals without jeopardizing school safety and academic climate.**

---

[39] Fabelo, T., Thompson, M. D., Plotkin, M., Carmichael, D., Marchbanks, M. P. & Booth, E. A. (2011). Breaking schools' rules: a statewide study of how school discipline relates to students' success and juvenile justice involvement. New York, NY: Council of State Governments Justice Center and Public Policy Research.

[40] Hirschfield, P. (2009). Another way out: the impact of juvenile arrests on high school dropout. Sociology of Education.

Restorative Justice and Reduced Policing

Reforms efforts in Denver (CO) stand out for being grassroots-initiated, multi-pronged, sustained, and effective. More than 10 years ago, Padres & Jóvenes Unidos - a "multi-issue organization" led by students and adults of color - launched a campaign to reduce the uneven and excessive use of exclusionary and criminal (e.g. ticketing and arrests) sanctions in Denver Public Schools (DPS). In partnership with the Advancement Project, the organization documented the overreliance on law enforcement to address minor disciplinary issues among students of color.[41]

Over the next decade, the campaign scored several victories. First, **it pushed DPS to introduce restorative justice in six Denver schools during 2005**. Rather than punishing and excluding offenders, restorative practices like conferences, circles, and mediations aim to repair and strengthen their relationships with others in the school community.[42] Second, in 2008 a new disciplinary code mandated that schools minimize out of school suspensions, expulsion, and arrests, while increasing restorative and therapeutic alternatives to suspension.[43] **By 2013-2014, around 2,700 educators had been trained to lead restorative practices in their schools, and by 2014-2015 the district employed 41 full-time restorative practices coordinators**.[44] Third, **in 2013, the campaign catalyzed an inter-governmental agreement (IGA) between DPS and the Denver Police Department that redefined the role of police in schools. The agreement required school resource officers to differentiate between disciplinary issues and crime problems, de-escalate school-based incidents whenever possible**, accommodate schools' restorative approaches and individual students' disabilities, and undergo corresponding training each year.[45]

Denver's continuing reforms have coincided with sustained improvements across multiple domains. Most markedly, out of **school suspensions have fallen 64% between 2005 and 2015,**

Improvements were also evident in expulsions, school-based court referrals and referrals to law enforcement, the latter falling 31% during the school year after the IGA was signed to the lowest total

[41] For more details, see: Education on lockdown: the schoolhouse to jailhouse track, The Advancement Project.

[42] Morrison, B. E., & Vaandering, D. (2012). Restorative justice: pedagogy, praxis, and discipline. Journal of School Violence.

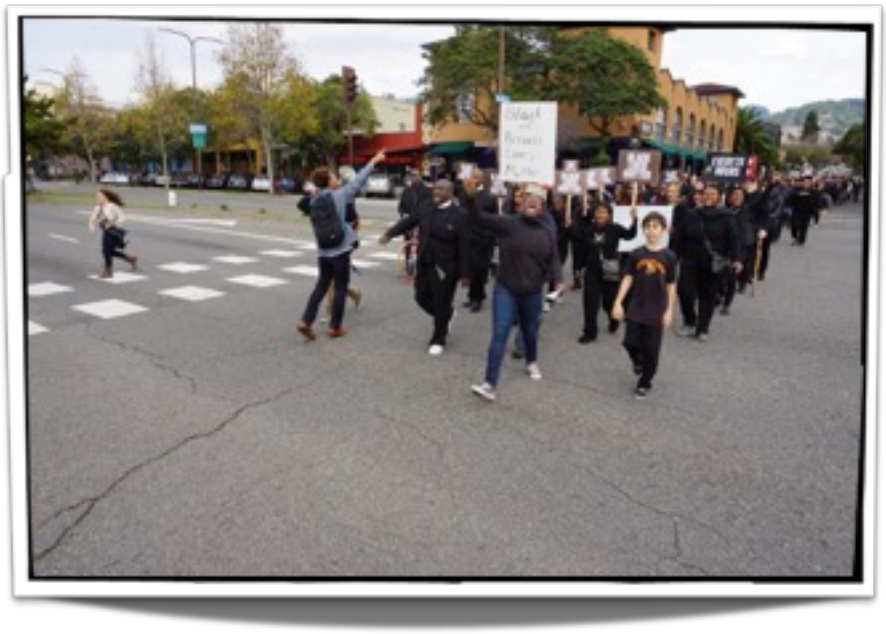
[43] See for example: Books not bars: students for safe and fair school. Padres & Jóvenes Unidos.

[44] Padres & Jóvenes Unidos (May 2015). The 4th Annual Denver Community Accountability Report Card: 2013-2014 School Year.

[45] The National Council of Juvenile and Family Court Judges. Summary of 2013 Intergovernmental Agreement between DPS and the Denver Police Department.

since 2003. Moreover, softening school discipline has done no discernible arm to academic climate. Amidst the foregoing reforms, **Denver schools reported impressive growth in standardized academic achievement (bucking statewide trends) and a marked reduction in the dropout rate.**

Evaluations of similar reforms instituted in other states corroborate Denver's success. Most notably, community activists and leaders also propelled Oakland's (CA) reforms, with the founding of RJOY (Restorative Justice for Oakland Youth). RJOY's success in individual schools[46] made restorative justice the natural focus of reforms that Oakland Unified instituted while under investigation by the U.S. Department of Education's Office for Civil Rights.[47] The investigation sought to address sharp racial disparities in suspensions. In 2015, the district announced an expansion of restorative justice into all 86 schools.[48] The district also recently banned suspensions for willful defiance[49] and signed an agreement with the police department that prohibits school officials from requesting police assistance to address school rule infractions and minor offenses like trespassing and loitering.[50] [51]



[46] Interview with Dr. Fania E. Davis (August 17, 2014). Restorative, not punitive, responses to youthful wrongdoing. Mindful Teachers.

[47] Khadaroo, S. T. (March 31, 2013). Restorative justice: one high school's path to reducing suspensions by half. The Christian Science Monitor.

[48] Oakley, D. (January 14, 2015). Oakland: school district to expand restorative justice programs to all 86 schools. The Mercury News.

[49] Frey, S. (May 14, 2015). Oakland ends suspensions for willful defiance, funds restorative justice. EDSource.

[50] Oakland Unified School District (June 10, 2015). Presentation of the report on the City of Oakland school safety officers program. Board of Education Meeting.

[51] Frey, S. (June 24, 2014). Three districts rewrite rules for campus police. EDSource

The implementation of restorative practices in only some of Oakland's schools permitted an evaluation that compared improvements in implementing (RJ) and non-implementing (Non-RJ) schools.[52] Multivariate comparisons show RJ schools experienced greater reductions in suspensions and racial disparities therein, while raw comparisons showed greater improvements in chronic absenteeism, reading levels, and graduation rates in RJ schools. Student and staff assessments affirm these positive results.

Expanded Services for Chronic Behavioral Problems

Although restorative practices and curtailing police involvement are helpful in diverting students from STPP, these reforms do little to address the needs of students with chronic behavioral conditions. In the absence of proper support and treatment, many of these students will face exclusion and criminalization, irrespective of the accessibility of restorative practices.

The most popular and promising approach to securing help and support for behaviorally-challenged students is PBIS (Positive Behavioral Interventions and Supports).[53] PBIS is a multi-tiered, non-punitive school reform and intervention framework that emphasizes clear expectations, rewards, data-driven decision-making (which promotes transparency), and building student and staff capacities.[54] Students who are not responsive to universal supports may receive secondary interventions that provide additional support and structure. Students for whom secondary supports are insufficient may receive tertiary interventions that aim to address their individual needs by building new skills and changing their milieu in order to avoid reinforcing negative behavior. Both Denver and Oakland incorporated PBIS into their reform strategies.[55] [56]

Research suggests that implementing PBIS with fidelity is effective at reducing office referrals and out of school suspensions[57], while also reducing dropout.[58] However, properly implementing PBIS for all needy students often requires time, space, personnel, and skills that are beyond schools' and

---

[52] Jain, S., Bassey, H., Brown, M. A., Kalra, P. (2014). Restorative justice in Oakland schools: implementation and impact. Data in Action.

[53] See Positive Behavioral Interventions and Supports website.

[54] Horner, R. H., Sugai, G., & Anderson, C. M. (2010). Examining the Evidence Base for School-Wide Positive Behavior Support. Focus on Exceptional Children.

[55] Goebel, K., Meskimen, J., Johnston, P., Pisciotta, L., Ross, L., Figueroa, H., Graham, J., Grigg, M., DeLeon, R., Shank, J., Mincic, M. (2011). Positive behavioral intervention & support (PBIS) coaching report 2005-2011. Denver Public Schools.

[56] Khadaroo (March 31, 2013).

[57] Simonsen, B., Eber, L., Black, A. C., Sugai, G., Lewandowski, H., Sims, B., & Myers, D. (2012). Illinois statewide positive behavioral interventions and supports: evolution and impact on student outcomes across years. Journal of Positive Behavior Interventions.

[58] Horner el al. (2010).

districts' capacities.[59] Whereas a federally-supported network of state and local coordinators exists to facilitate PBIS training and implementation, individual school districts bear responsibility for funding and staffing interventions. **Hence, it behooves those seeking to dismantle the STPP to pressure higher levels of government to allocate more funds for disciplinary alternatives to needy school districts.**

Judge Teske's Multi-Integrated Systems Model

One promising locally-initiated strategy for shifting resources from the juvenile justice system to schools is the Multi-Integrated Systems Model spearheaded by Judge Steven Teske in Clayton County (GA). Judge Teske launched this reform in response to an inundation of juvenile court referrals from schools, typically for minor offenses. In 2003, Teske convened representatives of the Clayton county school district, police, juvenile court, and social services agencies to assess the problem and their role in it. The meetings revealed that schools were referring students to court (via the police), because they lacked the resources to address all students' behavioral needs.

Judge Teske's solution includes two key elements. First, **Teske and other county officials sponsored a new inter-agency service entity to help troubled students before they come to court.** The Clayton County Collaborative Child Study Team (Quad C-ST) consisted of a mental health professional, the student's school social worker and counselor, a social services professional, juvenile court officer and approved child service providers, and a trained facilitator provided by the court. Services options include Functional Family Therapy, Multisystemic Therapy, cognitive behavioral programming and wrap-around services. Second, **Teske brokered an agreement between the school district and the Chief of Police that stipulated that misdemeanor offenses at school not be referred to juvenile court "unless the student has exhausted a two tier process that includes: warning on the first offense to student and parent; referral to a conflict skills workshop on the second offense."[60]**

The timing, breadth and magnitude of Clayton County's improvements are so striking that it is hard to fathom an explanation other than the reforms that Judge Teske initiated. **School-based referrals to juvenile court dropped precipitously immediately following implementation and fell more than 73% between 2003 and 2011.[61] In addition, the felony referral rate declined 51% from its 2004 high, while the graduation rate increased 24% by 2010.[62]**

Whereas Teske exemplifies a top-down approach, similar reforms have also been initiated by activists. For example, the reforms in Broward County (FL) were galvanized by Marsha Ellison, the NAACP's

---

[59] McIntosh, K., Predy, L. K., Upreti, G., Hume, A. E., Turri, M. G. & Mathews, S. (2014). Perceptions of contextual features related to implementation and sustainability of school-wide positive behavior support. Journal of Positive Behavior Interventions.

[60] Teske, S. C., Huff, B., & Graves, C. (2013). Collaborative role of courts in promoting outcomes for students: the relationship between arrests, graduation rates, and school safety. Family Court Review.

[61] The Council of State Governments, Justice Center (2014). The school discipline consensus report: strategies from the field to keep students engaged in school and out of the juvenile justice system.

[62] Teske et al. (2013).

chapter president in Fort Lauderdale, who founded the Eliminating the Schoolhouse to Jailhouse Committee in 2005.[63] This campaign eventually drew the support of a Juvenile Court judge who drew inspiration from Judge Teske's reform model and the leadership of a new School Superintendent. Like Clayton County, Broward saw multiple agencies agreeing to divert students accused of minor offenses from police interactions to counseling[64] and experienced marked reductions in suspensions, expulsions, and arrests.[65]

Conclusion

Since the late 1990's various advocates and academics have asserted that the nationwide crackdowns on student misbehavior are not only of questionable benefit to school safety and climate, but also render many children, especially males of color, better prepared for prison than for productive lives. **These voices, once dissenting, are now at the forefront of official discourse and policy. Grass-roots activism has been particularly useful with respect to expanding school-based restorative justice and limiting the role of police in response to school misconduct, resulting in reductions in suspensions and school-based court referrals**. Activists are also advised to encourage state and county policy makers to forge partnerships and incentive structures whereby local districts agree to send fewer students to the juvenile justice system or to the exits in exchange for more county or state funded school-based behavioral health services.

[63] Stucki, B. W. (December 4, 2013). Reversing Broward County's school-to-prison pipeline. The American Prospect.

[64] Yi, K. (November 2, 2013). Broward schools see drop in student arrests. Sun Sentinel.

[65] Reyes, R. A. (February 6, 2014). Bold lesson: Florida school district swaps cops for counseling. NBC News.

PICO National Network - Heather Wilson.

Ice Detainers, Crime and the Criminal Justice System
By Michael T. Light, Assistant Professor of Sociology, Purdue University

Between 2008 and 2015, nearly 3 million people were deported from the United States, roughly 270,000 more than over the entire last century.[66] **A major part of this stepped-up immigration enforcement involves state and local collaboration with federal immigration authorities. Programs such as Secure Communities (S-Comm) were designed as crime fighting initiatives to enhance the ability of Immigration and Customs Enforcement (ICE) to identify and deport criminal aliens**. The basic operational principle behind the S-Comm program was straightforward: because criminal aliens are more likely to encounter state and local law enforcement than federal authorities, fingerprint information on arrested suspects is sent to immigration authorities who review the biometric information. If ICE officials determine that further investigation into the individual's immigration status is warranted, they can issue a detainer requesting the agency to detain the individual for up to 48 hours so ICE can assume custody. Among the programs designed to increase state and local cooperation with immigration enforcement, S-Comm was one of the most extensive. In 2008, the pilot program ran in 14 jurisdictions. By 2013, the Department of Homeland Security (DHS) reported that S- Comm was active in all 3,181 counties.

Recently more and more state and local jurisdictions have decreased their cooperation with ICE, partially due to federal court decisions which created liability concerns. By 2015, over 350 counties have stopped honoring detainer requests, resulting in

[66] The official term for deportations are removals. For data regarding removal in 2008-2015 see FY 2015 ICE Immigration Removals, US Immigration and Customs Enforcement. For data regarding 1900-2000 see Yearbook of Immigration Statistics: 2007 Enforcement, US Homeland Security.

16,495 declined immigration detainers by state and local authorities between January 2014 and June 2015.[67] This brief reviews these legal and policy developments as well as the claim that local immigration enforcement enhances public safety. Overall, the **evidence suggests that local cooperation with ICE detainers is costly to local governments, creates liability concerns for law enforcement agencies, increases potential for miscarriages of justice for noncitizen defendants, marginalizes immigrant communities, and has no discernible public safety benefits.** The conclusion highlights recent policy changes from city, state, and county jurisdictions that offer a promising path forward

Does ICE Cooperation Reduce Crime?

Because the DHS has consistently claimed that programs such as S-Comm enhance public safety[68], this is perhaps the most important policy question when evaluating the effectiveness of local cooperation with ICE. The answer from multiple independent, peer-reviewed studies is no. Specifically, **comprehensive analyses of the Secure Communities program by two independent teams of researchers revealed no impact of S-Comm on crime.**[69] [70]

There are several reasons why S-Comm did not produce the public safety benefits it had promised. First, while **the deportation immigrants with criminal records increased substantially under the program (and other related programs), this expansion has primarily been among less serious criminals, such as traffic offenders**.[71] In other words, most of those removed through S-Comm did not pose a serious risk to public safety to begin with. Second, the local immigration enforcement may undermine public safety by marginalizing immigrant communities and impeding cooperation between police and local residents. A 2009 report by the Government Accountability Office on the federal 287(g) program, for example, found evidence that many community members feared that police would deport individuals for minor offenses.[72] Research on procedural justice suggests that fear of and mistrust of legal authorities can lead to legal cynicism and weaken public safety by reducing cooperation between authorities and immigrant

---

[67] U.S. Immigration and Customs Enforcement. Level of cooperation from state and local law enforcement partners, FY 2015 ICE Immigration Removals.

[68] Department of Homeland Security, Immigration and Customs Enforcement (2009). Secure communities: a comprehensive plan to identify and remove criminal aliens strategic plan. Washington, DC: Author.

[69] Treyger, E., Chalfin, A., & Loeffler, C. (2014). Immigration enforcement, policing, and crime: evidence from the Secure Communities program. Criminology and Public Policy.

[70] Miles, T. J., & Cox, A. B. (2014). Does immigration enforcement reduce crime? Evidence from Secure Communities. Journal of Law and Economics.

[71] Treyger et al. (2014) show that the largest expansion of crime types for criminal aliens pre- to post-Secure Communities was in the removal of criminal traffic offenses, from 15.8% of all aliens in 2009 to 23.1% in 2012.

[72] U.S. Government Accountability Office (2009). Immigration enforcement: Better controls needed over program authorizing state and local enforcement of federal immigration laws. Report to Congressional Requesters. Washington, DC: GAO.

communities.[73] Moreover, **research suggests immigration actually reduces criminal violence more in cities with pro-immigration policies, such as "sanctuary" policies that formally limit local law enforcement cooperation with immigration authorities**, than in cities with a less receptive political climate for immigrants.[74]

Evidence suggests that local cooperation with ICE detainers is costly to local governments, creates liability concerns for law enforcement agencies, increases potential for miscarriages of justice for noncitizen

Costs and Liabilities of ICE Cooperation

A major reason why many local jurisdictions severed ties with the ICE detainer programs was liability. In 2008, Ernesto Galarza, a U.S. citizen, was mistakenly arrested for a drug offense in Allentown, Pennsylvania. Galarza posted bail the day after his arrest, but was held for three days in Lehigh County Prison due to an ICE detainer. Galarza sued claiming that being held in jail for nothing more than an ICE detainer was a violation of the Fourth Amendment and the Due Process Clause. The federal courts agreed, finding that "Galarza's continued detention after he posted bail constituted a seizure within the Fourth Amendment and that the seizure was unsupported by probable cause."[75] It further found that **"immigration detainers do not and cannot compel a state or local law enforcement agency to detain suspected aliens subject to removal."[76] In other words, local jurisdictions were under no legal obligation to honor ICE detainers, and could be held liable for wrongfully detaining individuals even when a detainer is issued**. In the end, the United States, the City of Allentown, and Lehigh County paid Galarza $145,000 and the Lehigh County Board of Commissions voted unanimously to end the county ICE detainer policy.[77] In a similar case out of the Oregon District Court, officials in Clackamas County were found to have violated Maria Miranda-Olivares' Fourth Amendment rights by holding her for immigration authorities without probable cause, and paid $30,000 in damages.[78]

[73] Kirk, D. S., Papachristos, A. V., Fagan, J., & Tyler, T. R. (2012). The paradox of law enforcement in immigrant communities: does tough immigration enforcement undermine public safety?. The ANNALS of the American Academy of Political and Social Science.

[74] Lyons, C. J., Vélez, M.B., & Santoro, W.A. (2013). Neighborhood Immigration, Violence, and City-Level Immigrant Political Opportunities. American Sociological Review.

[75] U.S. Court of Appeals for the Third Circuit (March 4, 2014). Galarza vs. Szalczyk, City of Allentwon, Lehigh County, Marino, Correa.

[76] Ibid.

[77] American Civil Liberties Union (June 18, 2014). Galarza vs. Szalczyk.

[78] Portland Law Collective (May 8, 2015). Victory! Settlement in ICE detainer case that changed jail practices across Oregon.

Fearing similar liability issues, many jurisdictions began declining to hold immigrants on ICE detainers alone.[79] However, **liability represents only one of the costs local jurisdictions incur from ICE detainers, as ICE does not reimburse for the costs of additional detention in all circumstances.** A 2012 report found that the taxpayers of Los Angeles County spend over $26 million per year to detain immigrants for ICE. Across the state, the fiscal cost of ICE detainers for California is over $65 million.[80]

It is important to note that these figures do not include any of the human costs associated with wide-spread deportations. A 2013 report by Human Impact Partners, for example, estimated that there are over 4.5 million children in the U.S. with at least one undocumented parent, and over 150,000 U.S. born children had a parent deported in 2012 alone.[81] The report highlights the deleterious consequences of living under the threat of detention or deportation for children and their families, including poor health and education outcomes, behavioral problems, poverty, and malnutrition.

Potential Miscarriages of Justice

The increasing integration of criminal justice and immigration enforcement creates serious potential for false convictions, particularly in misdemeanor courts where the number of cases filed dwarfs the number felony cases. In order to handle this volume, misdemeanor courts process defendants quickly, defendants often lack counsel, and there is substantial institutional pressure to plead guilty. While this system is problematic for all defendants, the potential for false convictions is especially acute for noncitizen defendants. **Because ICE now has the ability to screen criminal facilities in many jurisdictions, noncitizens who may be deportable face a "plea**

---

[79] Beadle, A. P. (July 24, 2014). Avalanche of local detainer limits underscores need for federal policy reform. American Immigration Council.

[80] Greene, J. A. (August 22, 2012). The cost of responding to immigration detainers in California: preliminary findings. Justice Strategies. In Colorado, the estimate is $13 million per year for detaining suspected immigration violators, see American Civil Liberties Union of Colorado (April 2014). It is time for Colorado to stop honoring immigration detainers.

[81] Family Unity, Family Health (June 5, 2013). How family-focused immigration reform will mean better health for children and families.

bargaining crisis."[82] That is, defendants who are without status and are placed on an ICE detainer may see little value in fighting the charges because they face removal proceedings regardless of the outcome of the case. Alternatively, they may accept any plea offer at their first court appearance to avoid ICE detection. In both of these scenarios, the presence of ICE detainers fundamentally alters the incentives to plead for noncitizen defendants, resulting in convictions that are not dependably based on guilt.

Policy Reforms: Examples from Cities, States, and Counties

Given the problems identified with S-Comm, the program was officially disbanded in 2014 and replaced by the Priority Enforcement Program (PEP) in July 2015. While the program is designed to be less reliant on immigration detainers, the centerpiece of the program is still tied to cooperative agreements between local criminal justice authorities and ICE.[83] **For this reason, several state and local governments have continued to propose polices that attempt to mitigate the increasing convergence of criminal and immigration law**. In recent years, California has provided some prominent examples.

On January 2014 California's TRUST (Transparency and Responsibility Using State Tool) Act went into effect. This law was designed to limit California's cooperation with federal immigration enforcement by prohibiting local collaboration in transferring certain inmates into immigration detention and mandating release of certain defendants from custody when they are eligible for release, regardless of

[82] Cade, J. A. (2013). The plea bargaining crisis for noncitizens in misdemeanor courts. Cardozo Law Review.

[83] See U.S. Immigration and Customs Enforcement, Priority Enforcement Program

an ICE hold.[84] A similar bill was adopted in Connecticut. However, it is important to highlight that such policies are not limited to state legislatures, and **multiple county governments have implemented policies to restrict cooperation with ICE, many long before any state laws had passed.**[85]

In 2011, for example, Cook County (IL) passed a resolution stating that "having the Sheriff of Cook County participate in the enforcement of ICE detainers places a great strain on our communities by eroding the public trust that the Sheriff depends on to secure the accurate reporting of criminal activity and to prevent and solve crimes."[86] Therefore, the county declared that "unless ICE agents have a criminal warrant, or County officials have a legitimate law enforcement purpose that is not related to the enforcement of immigration laws, ICE agents shall not be given access to individuals or allowed to use County facilities for investigative interviews or other purposes, and County personnel shall not expend their time responding to ICE inquiries or communicating with ICE regarding individuals' incarceration status or release dates while on duty."[87] In 2014, the Dekalb County (GA) Sheriff's Office announced that they will no longer honor detention requests from ICE without a warrant or other sufficient probable cause.[88] In San Juan County (WA), the Sheriff's office will only honor ICE detainers if there is independent information from a law enforcement agency that there is "sufficient legal basis for detention, such as probable cause or a confirmed warrant."[89] Similar policies have been implemented in Suffolk County (NY), Union County (NJ), and Milwaukee County (WI). **The unifying theme across nearly all of these policies is that ICE detainers, alone, are a wholly insufficient legal basis for imprisonment in county jails.**

---

[84] Two other bills from California aimed at mitigating the nexus between immigration and criminal law enforcement took effect on January 1, 2016. AB 899 prohibits the sharing of confidential information from juvenile court proceedings with any federal official (including ICE) without court approval. In other words, it safeguards juvenile records from unauthorized disclosure to federal officials. AB 1343 requires that defense attorneys "provide accurate and affirmative advice about the immigration consequences of a proposed disposition" and also mandates that prosecutors "consider the avoidance of adverse immigration consequences in the plea negotiation process as one factor in an effort to reach a just resolution" in a case. This latter provision departs considerably from long-standing precedent where prosecutors have not traditionally had to account for collateral consequences in plea negotiations, given that deportation decisions are made outside the criminal law context. However, because even low-level criminal convictions can lead to detection and deportation, the California law reflects the reality that deportation represents a severe penalty for many criminal defendants. Thus, "in the interests of justice," this must be considered by prosecutors in the plea bargaining process.

[85] See Immigration Legal Resource Center, Detainers Policies.

[86] Cook County (September 7, 2011). Policies for responding to ICE detainers. National Immigration Justice Center.

[87] Ibid.

[88] Deklab County Sheriff's Office (December 4, 2014). Deklab Sheriff will hold released inmates for immigrations and customs without warrants.

[89] San Juan County (2014). A resolution adopting a policy regarding how San Juan County will honor immigration hold request from the Unites States Department of Immigration and Customs Enforcement.

Policies limiting ICE cooperation have also been implemented at the city level. For example, in 2014 the City Council of Boston declared that "when local law enforcement officials indiscriminately honor all ICE civil immigration detainer requests, including those that target non-criminal aliens, immigrant residents are less likely to cooperate and public trust erodes, hindering the ability and effectiveness of Boston's police force."[90] Because of this, "a law enforcement official shall not detain an individual on the basis of a civil immigration detainer request or an ICE administrative warrant after the individual is eligible for release from custody, unless ICE has a criminal warrant, issued by a judicial officer, for the individual."[91] The City of Chicago had passed a similar resolution in 2012,[92] and policies limiting ICE cooperation have also been adopted in New York and Washington D.C.

Conclusion: The Changing Landscape of Immigration Enforcement

Local cooperation with federal immigration authorities has fundamentally altered the landscape of immigration enforcement. Despite repeated claims that programs such as Secure Communities enhance public safety, the evidence supporting such claims is remarkably lacking. **Pervasive ICE detentions have, however, resulted in the violation of Constitutional rights, ballooning local criminal justice costs to hold low-risk immigrant offenders, and have created problematic incentives for noncitizen defendants that can lead to miscarriages of justice**. Given the fiscal and human costs associated with widespread deportations resulting from run-ins with local law enforcement, recent policies enacted at the city, state, and county levels which limit local cooperation with immigration authorities provide a promising opportunity towards achieving a more just criminal justice system for the nation's roughly 22 million non-U.S. citizens.

[90] City of Boston (2014). An Ordinance Establishing a Boston Trust Act.

[91] Ibid.

[92] Chicago, Office of the City Clerk (July 25, 2012). Amendment of Chapter 2-173 of Municipal Code by adding new Sections 005 and 042 regarding citizenship and immigration status.

The High Cost of Corrections Privatization
By Jeremy Mohler, Communications Specialist, In the Public Interest

Each year, the private corrections industry, made up of companies that contract with corrections departments and facilities to oversee and provide services to incarcerated people, collects hundreds of millions of dollars in profits from taxpayers. These companies often win contracts by claiming they can manage services more "efficiently" than the government. However, evidence of cost savings is mixed at best.[93] Additionally, in an effort to provide services with fewer resources while maximizing profits, corrections companies often cut corners, reducing the quality, effectiveness, and accessibility of their services. **The evidence is clear: the private corrections industry, which profits more when more people are incarcerated, benefits from America's soaring incarceration rate, the highest in the world.**

This brief describes: (1) the three types of corrections privatization, facility operation, services, and "community corrections"; (2) recommendations; and (3) examples of successful criminal justice reform campaigns.

The Private Corrections Industry

[93] American Civil Liberties Union (2011). Banking on bondage: private prisons and mass incarceration.

Facility Operation. **Private companies hold contracts to operate hundreds of prisons, jails, and detention centers at all levels of government and across the country**. Some companies even own and operate facilities, allowing them to charge a government rent in addition to operation fees. **Facility operation contracts are often extremely profitable.** In 2014, Corrections Corporation of America (CCA), the country's largest private prison operator, had a net profit margin nearly double that of the average private company in the U.S.[94] In 2015, CCA and GEO Group - the country's second largest prison operator - made a combined $361 million in profit from taxpayer money.[95] Together, CCA and GEO Group control approximately 75% of the private prison market. Other facility operators include Management & Training Corporation (MTC), LaSalle Southwest Corrections, Community Education Centers, and Emerald Companies.[96]

The typical facility operation revenue model employs a per diem per prisoner pay structure, which means companies seek to maximize the number of prisoners in their facilities to increase profits. Because both CCA and GEO Group are publicly traded companies - structured as real estate investment trusts (REITs) - they are legally required to divulge what they perceive as risks to their business. In its 2014 Annual Report, CCA explained that less incarceration is a business risk: "the demand for our facilities and services could be adversely affected by the relaxation of enforcement efforts, leniency in conviction or parole standards and sentencing practices or through the decriminalization of certain activities."[97]

The criminal justice system is a core public safety responsibility and should not be handed out to the lowest bidder or subjected to shortsighted cost cutting. If privatized facilities and services were reduced, instead of leaving the system, private profits could be invested in improving prison and jail conditions - we could afford publicly funded and managed programs that provide job training, mental health care, and substance abuse treatment.

Private facility operators often push to include occupancy guarantees – known as "bed quotas" – in their contracts.[98] These contract clauses incentivize keeping facilities filled – sometimes at full capacity – by charging governments for unused beds, which runs counter to the goals of reducing prison populations and rehabilitating prisoners. Additionally, private

---

[94] Tylek, B. (2015). Private prisons: hiding behind a veil of democracy.

[95] In the Public Interest (February 26, 2016). How Private Prisons Take Tax Dollars Away from Fixing Our Criminal Justice System.

[96] Tylek (2015).

[97] Corrections Corporation of America (2014). Annual Report Form 10-K.

[98] In the Public Interest (September 2013). Criminal: how lockup quotas and 'low-crime taxes' guarantee profits for private prison corporations.

For example, **CCA has repeatedly failed to follow basic regulations and standards regarding facility operations and safety, endangering prisoners and staff alike**. Over the course of one month in 2013, the company lost contracts in four different states after several prisoner deaths and riots under their watch. **One of those contracts was with the state of Idaho for a prison so dangerous its prisoners called the facility "Gladiator School."** GEO Group has a similar track record of violence and prisoner neglect.

operators - under the guise of cost savings - often cut corners to maximize profit, including failing to hire a sufficient number of and underpaying staff, reducing employee training, neglecting facility maintenance and equipment, and lowering the quality and nutrition of food.[99]

Corrections Services. Many facilities, both public and private, contract with the private sector for services such as health care, food, commissary, telephone, and finance. Like for-profit facility operators, the **companies that provide these services focus on reducing costs to maximize profits, which often worsens conditions and burdens prisoners and their families with extra costs**.

Community Corrections. Some corrections departments and courts around the country are beginning to incarcerate few people while increasingly utilizing "community corrections," i.e., probation programs, residential re-entry centers (or "halfway houses"), and rehabilitation facilities.[100] [101] Private corrections companies, particularly those that are publicly traded, are adapting their business models to this change. Both CCA and GEO Group have actively acquired community corrections companies to diversify, consolidate, and integrate their for-profit corrections footprint.[102]

Like in facility operation and services, the profit motive is at odds with the stated purpose of community corrections, and private corrections companies are financially dependent on the growth of supervised populations, creating a perverse incentive not to truly rehabilitate prisoners.

---

[99] In the Public Interest (April 2016). Cutting corners: how government contractors harm the public in pursuit of profit.

[100] Carson, E. A. (January 7, 2015). Prisoners under the jurisdiction of State or Federal correctional authorities 1978-2013 (Excel spreadsheet). Bureau of Justice Statistics.

[101] Hartney, C. & Glesmann, C. (May 2012). Prison bed profiteers: how corporations are reshaping criminal justice in the US. National Council on Crime & Delinquency.

[102] Grassroots Leadership (November 2014). Treatment industrial complex: how for-profit prison corporations are undermining efforts to treat and rehabilitate prisoners for corporate gain.

Recommendation

- **Counties and states should not contract with for-profit companies to operate facilities. If a contract is already in place, the jurisdiction should end the contract as soon as legally possible**. Correctional officers and other workers in closed private facilities should be offered placement in other facilities or training for other positions or industries. Illinois, for example, extended its Private Correctional Facility Moratorium Act in 2011 to prohibit the "ownership, operation or management of correctional facilities by for-profit private contractors," at the county level.[103]

- **All contracts with service companies should only allow charging prisoners for services if basic services are also offered at no cost, either in the contract or by the facility.** For example, video visitation services should be offered in addition to free, in-person visitation, not in place of it. All rates and fees charged by contractors for services should be reasonably related to local area rates.

- **All contracts – whether between the government and an operator/provider or between the operator/provider and a subcontractor – must include rigorous performance standards, service level requirements, staff ratios, and specified worker pay and benefits.** The government must ensure adequate oversight of any contract to ensure that the contractor is consistently meetings these requirements.

[103] Illinois General Assembly. Corrections (730 ILCS 140/): Private Correctional Facility Moratorium Act.

- **No prisoners should be transferred to privately operated facilities across state lines except under temporary emergency circumstances.**
- **Counties and states should enact legislation to require that for-profit corrections companies be held to the same transparency and accountability standards as the public sheriff's office or department of corrections.**

- **All public officials with corrections decision-making authority (legislators, department of corrections officials, district attorneys, sheriffs, judges, etc.) should be prohibited from accepting campaign contributions from private corrections companies.**

Pushing Back Against Privatization

Many communities around the country have organized against perverse private influence in the criminal justice system.

In 2012, New Hampshire invited companies to submit proposals to operate the state's prisons. In response, a coalition of community, legal, and labor organizations launched a statewide education campaign to expose the harms of for-profit operation. In April 2013, the state announced that it had stopped considering privatization after finding that none of the submitted proposals met standards for prisoner care.[104] **The state also concluded that the low wages and benefits proposed by the bidders would lead to labor shortages**. A bill to permanently prohibit private prisons in the state eventually passed the House of Representatives, but was voted down by the Senate. The bill also would have prevented the state from transferring prisoners to privately operated prisons out of state except under temporary emergency circumstances.

In 2005, responding to community concerns, the Champaign County (IL) Sheriff's Office renegotiated its existing jail phone contract with Evercom (later Securus).[105] Previously, the contract included commissions paid to the office of $14,000 per month. The new contract included no commissions and rates were capped for all calls, pre-paid and collect. The county transferred funding from its general fund to make up the difference. T**he move has brought justice to families who have loved ones incarcerated by making the cost of phone calls from the jail affordable.**

In 2015, GEO Group was forced to drop its plans for the construction of a 1,051-bed jail in Adelanto (CA) after facing public pressure from a coalition led by Californians United for a Responsible Budget (CURB). The coalition opposed the new facility on moral grounds and called for a continued investment in diversion and alternatives to incarceration, including pretrial release, community-based mental health treatment, and housing. Though the city is "extremely pro-growth," as one councilman

---

[104] Flatow, N. (May 3, 2013). New Hampshire Senate defeats private prison band. Think Progress.

[105] Emmanuel A. & Exstrum, O. (August 19, 2015). Illinois and Cook County reconsider profits from inmate phone calls. The Chicago Reporter.

described Adelanto, city leaders unanimously rejected GEO Group's plan, which the company claimed would bring millions of dollars and jobs to the city.[106]

In 2015, a group of concerned citizens led by IndyCAN, a faith-based group advocating for alternatives to incarceration, stopped a public-private project to build a new justice center in Marion County (IN). At the time, the project, which would include a new jail and space for courts, was the largest public-private criminal justice project in the U.S.[107] IndyCAN stood firm on their principle that the core problem with the new facility was that it would contribute to, not address, the problem of mass incarceration.[108]

[106] Johnson, S. (October 2015). Jail proposal shot down. Victorville Daily Press.

[107] Evans, T. (December 12, 2014). New center called 'Face of Justice' for future. Indy Star.

[108] Milz, M. (June 8, 2015). Council votes not to hear Indianapolis Justice Center proposal. WTHR.

Reentry Support for Families and Children of Inmates
By Sara Wakefield, Associate Professor School of Criminal Justice, Rutgers University

Reentry support for families of inmates would be important at any rate of incarceration but the sheer volume of people affected by criminal justice contact is the most noticeable aspect of punishment in the United States. **In 2010, about 2.5 million adults were in prison and on parole.**[109] The number of people who have served time or been convicted of a felony is unknown, though **a recent study estimates that there are 5.1 million ex-prisoners in the population.**[110] Far from being socially isolated, prisoners and ex-prisoners are connected to millions of others as parents, children, siblings, friends, and employees.

A recent study estimated the number of people who know or are related to someone in prison and how such connections mirror racial disparities in imprisonment generally. Using data from the 2006 General Social Survey, the study found that while almost 89% of White women have no family members in prison, only 43% of Black women report the same.[111] The concentration of incarceration was also evident: among Black women, about 15% reported only one incarcerated family member, but 23% report more than one and a full 2% reported having six or more family members currently incarcerated.

At the peak of the prison boom, about 1 in every 28 children had a parent incarcerated[112] and the majority of state and federal inmates were parents to minor children. Disparities in imprisonment translate to large racial disparities in the likelihood of experiencing parental imprisonment as well: 1.8% of White children and 3.5% of Hispanic children have an incarcerated parent compared to 11.4% of Black children.[113] The number of children who have ever had a parent incarcerated is unknown but a recent conservative estimate suggests that it is more than 5 million (or roughly 7% of the population).[114]

The Significance of Family Member Incarceration

---

[109] Glaze, L. E., & Bonczar, T. (2011). Correctional Populations in the United States, 2010. Washington, DC: UC Government Printing Office.

[110] Shannon, S. K. S., Uggen, C., Schnittker, J., Thompson, M., Wakefield, S., & Massoglia, M. (2014). The Growth, Scope, and Spatial Distribution of America's Criminal Class, 1949-2010. Working Paper.: Department of Sociology, University of Minnesota.

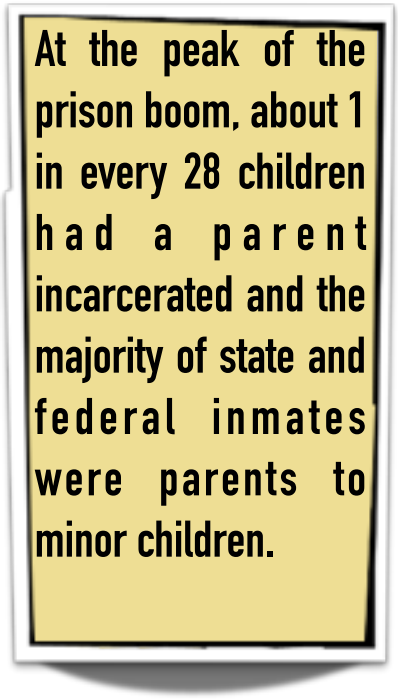
[111] Lee, H., McCormick, T., Hicken, M., & Wildeman, C. (2015). Racial inequalities and connectedness to imprisoned individuals in the Unites States. Du Bois Review.

[112] The Pew Charitable Trusts (2010). Collateral Consequences: Incarceration's Effect on Economic Mobility.

[113] Ibid.

[114] Annie E. Casey Foundation (2016). A shared sentence: the devastating toll of parental incarceration on kids, Ffmilies, and communities.

The incarceration of a partner is associated with a variety of adverse outcomes. Incarceration contributes to relationship dissolution as well as declines in household stability, instrumental support, and increased depression for the un-incarcerated partner.[115] Relationship dissolution often occurs quickly, upon incarceration, and presents a large risk for couples irrespective of the gender or race of the incarcerated partner.[116]



The effects of parental incarceration depend on the pre-prison circumstances of children and the instability that ensues as a result of incarceration. **Paternal incarceration is associated with significant declines in mental health and school performance, and increases the risks of homelessness, infant mortality, behavioral problems, and criminal justice system contact later in life.**[117] The consequences of maternal incarceration may be more severe for children but are substantially attenuated by instability prior to imprisonment.[118] **Increases in the incarceration of women are also strongly associated with entry into the child welfare system.**[119] Finally, emerging evidence suggests the burdens of incarceration extend well beyond partners and children to the siblings and parents of inmates as well as to caregivers of children left behind.[120]

---

[115] Massoglia, M., Remster, B., & King, R. D. (2011). Stigma or separation? Understanding the incarceration-divorce relationship. Social Forces.
Turney, K., Schnittker, J., & Wildeman, C. (2012). Those they leave behind: paternal incarceration and maternal instrumental support. Journal of Marriage and the Family.
Wildeman, C., Schnittker, J., & Turney, K. (2012). Despair by association? The mental health of mothers with children by recently incarcerated mothers. American Sociological Review.

[116] Apel, R. (2016). The effects of jail and prison confinement on cohabitation and marriage. The Annals of the American Academy of Political and Social Science.
Turney, K. (2015). Liminal men: incarceration and relationship dissolution. Social Problems.

[117] Roettger, M. E., & Swisher, R. R. (2011). Associations of father's history of incarceration with delinquency and arrest among Black, White, and Hispanic males in the US. Criminology.
Turney, K., & Haskins, A. R. (2014). Falling behind? Children's early grade retention after paternal incarceration. Sociology of Education.
Wakefield, S., & Wildeman, C. (2013). Children of the prison boom: mass incarceration and the future of American inequality. New York: Oxford University Press.

[118] Siegel, J. (2011). Disrupted Childhoods: Children of Women in Prison. New Brunswick: Rutgers University Press.

[119] Swann, C., & Sylvester, M. S. (2006). The foster care crisis: what caused caseloads to grow? Demography.

[120] Turnanovic, J. J., Rodriguez, N., & Pratt, T. C. (2012). The collateral consequences of incarceration revisited: a qualitative analysis of the effects of caregivers of children of incarcerated parents. Criminology.

Reentry and Families: Priorities for Policy and Reform

Research on the incarceration of a family member suggests two important principles that should guide policymakers and advocates. First, **the families of prisoners often experience substantial disadvantage and instability prior to incarceration**. The arrest, court processing, and incarceration of a family member may induce further trauma. **As a result, reentry supports should begin long before reentry**. Second, **incarceration may increase stability by buffering family members from abusive or troubled relatives**. Policies to support families should account for pre-prison circumstances as well as issues of mental health, substance abuse, and family violence, in order to improve reentry outcomes for ex-prisoners and their families. Fruitful policies and reforms to pursue include the following:

Account for Families in Criminal Justice Decisions. **Police officers, for example, should be trained on arrest procedures for parents, ensuring that children are safe and not traumatized by the arrest of a parent**. Courts should account for the impact of sentencing decisions on families/children and geographic proximity to children and family should be considered when placing inmates in correctional facilities. States should explore diversion programs for the convicted who have demonstrated connections to family and community and for whom a prison sentence would represent a substantial burden to families.

Support Families while a Loved One is Incarcerated. Losing a family member to prison requires replacing the economic and child care contributions of the prisoner to the family. Those who care for children of incarcerated parents are particularly burdened and incarceration of a parent is associated with an increased risk of child homelessness. **States should adopt emergency relief funds for families who lose a member to prison and support child care for children of incarcerated parents.** Such supports would link various institutions, including child welfare, schools, and other government agencies, to buffer families from the economic costs of incarceration of a family member. Programs should also address the mental health and wellbeing decline associated with partner or parent incarceration.

Refrain from Using Criminal Justice-related Histories to Infer Information about Family Relationships. The conviction history of an individual is not sufficient to infer information about their commitment to parenthood or the quality of their relationships with other family members. **Court and correctional officials should not**

use criminal conviction histories to make decisions about family contact except when that conviction history is directly relevant. Convictions for intimate partner violence or child abuse, for example, are relevant to whether or not a prison might allow a partner or child to visit but other information on crime type or conviction is not relevant such decisions.

Encourage Family Engagement while Incarcerated. Maintaining contact with incarcerated family members is costly and burdensome but visitation while incarcerated has been shown to reduce recidivism upon release. States should encourage (and fund) efforts to support family visitation, including travel to and from prisons, reduced or free phone calls, and ample visiting hours. **States should recognize that video conferencing does not take the place of in-person contact and prisons and jails should accommodate visitation with lengthy visiting hours, appropriate child-friendly contact visit rooms, and by prioritizing geographic proximity to family when placing inmates in particular facilities**.

Address Pre-existing Health and Substance Abuse Problems while Incarcerated and through Reentry. Parents and partners with significant health, mental health, and substance abuse problems present major difficulties for their families prior to incarceration and upon release. **States should reinvest in treatment programs for prisoners and continue such supports upon release**. The burdens of providing treatment support should not fall on families; wraparound programs that coordinate treatment and health interventions from incarceration to reentry would ease the burdens on families to coordinate such efforts. States should pursue better connections between prison officials and parole supervision; in many states, prisons and parole are managed by separate agencies, creating numerous gaps in health coverage and treatment during the reentry process.

Reentry Supports. **States should invest in programs that increase the self-sufficiency of returning prisoners.** Such programs may include educational investments or employment programs but should not exclusively rely on employment. Programs that prioritize pro-social engagement, whether paid or not, offer the best pathway for rebuilding families following incarceration.

Reduce Collateral Consequences Related to Imprisonment. Policies that eliminate or substantially reduce legal debt or child support arrears should be pursued. Legal debt (court fees, supervision fees, and the like) and back child support represent a significant barrier to successful reentry and tax already severely disadvantaged families. **States should also opt out of bans that prevent families from living together in public housing due to conviction histories, remove conviction barriers to college attendance, and encourage volunteering opportunities that allow ex-prisoners to fully engage with their families upon release.**

Voting Rights Restoration
By Christopher Uggen, Professor of Sociology and Law, University of Minnesota

According to the most recent national estimates, felon disenfranchisement bars over 5.8 million U.S. citizens from voting.[121]

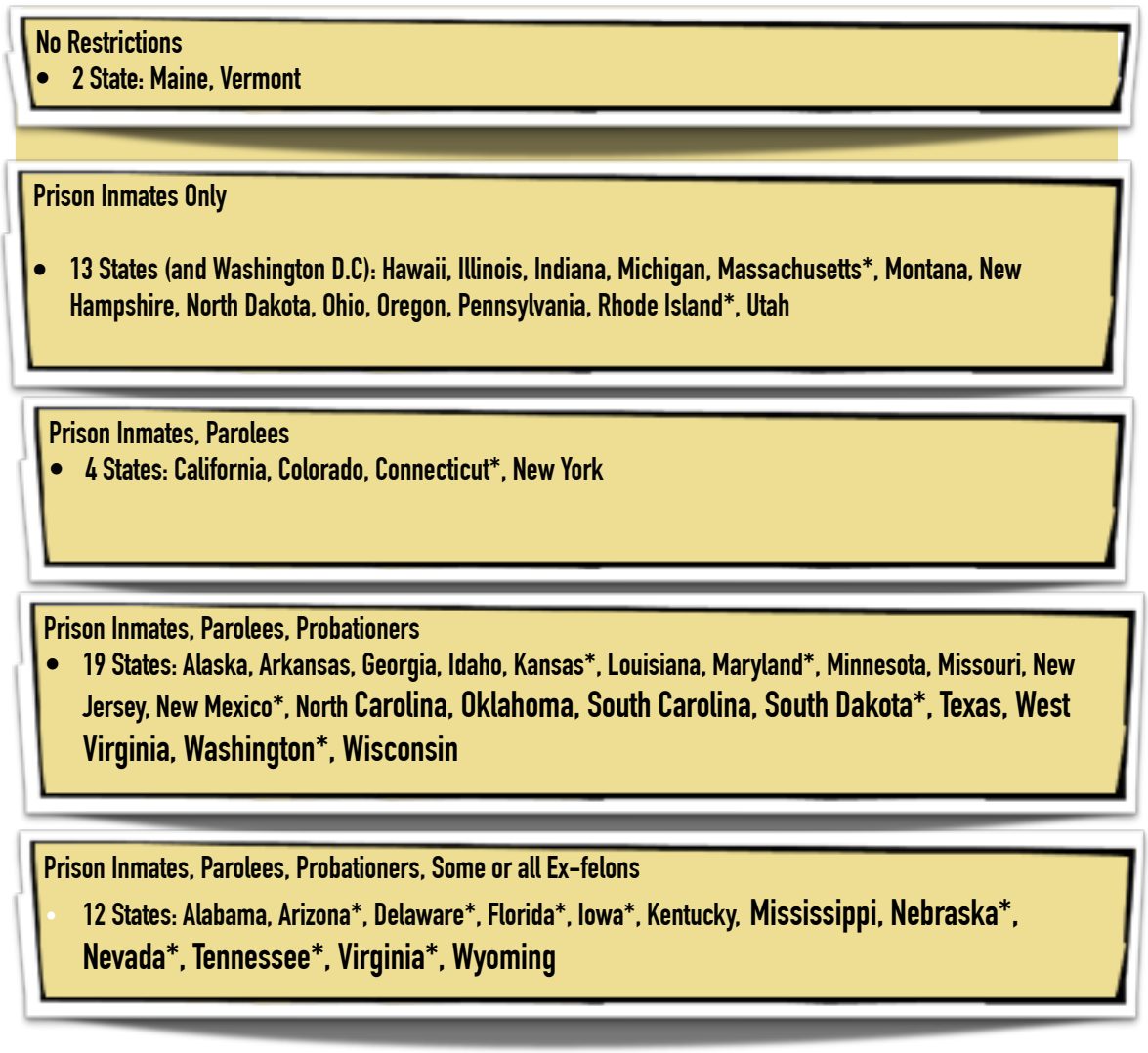
The United States has a long history of disenfranchising prisoners, as well as those on probation, parole, and even former felons no longer under supervision. U.S. felon voting laws are state-based,

such that each of the 50 states maintains different laws regulating a felon or ex-felon's right to vote. Currently, 48 states deny prisoners the right to vote and 37 deny the right to people convicted of felonies who are not incarcerated. Within the states, there are clear action steps that counties can pursue to challenge disenfranchisement and to reduce its impact.

Variation in US Felon Disenfranchisement Laws

* indicates a significant change since 2004

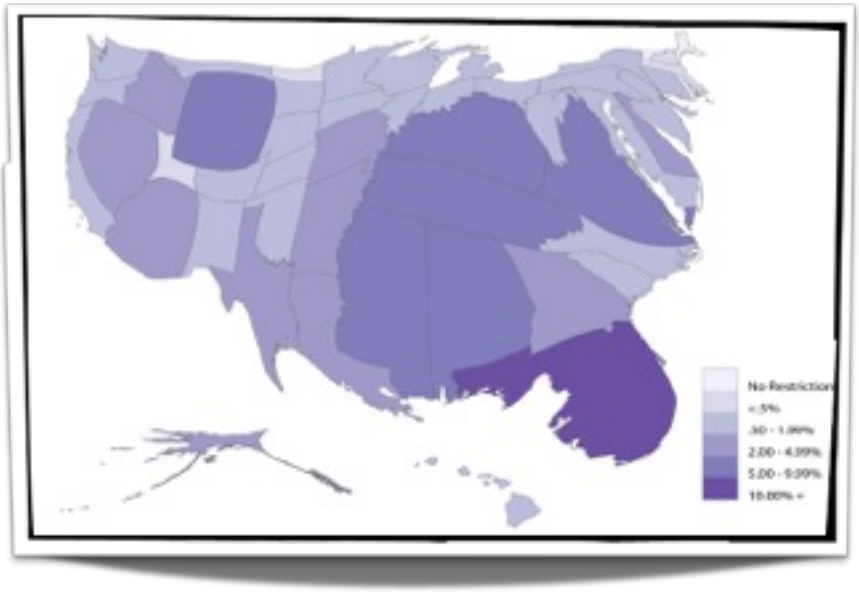
[121] Uggen, C., Shannon, S. & Manza, J. (2012). State-level estimates of felon disenfranchisement in the United States, 2010. Washington, DC: Sentencing Project



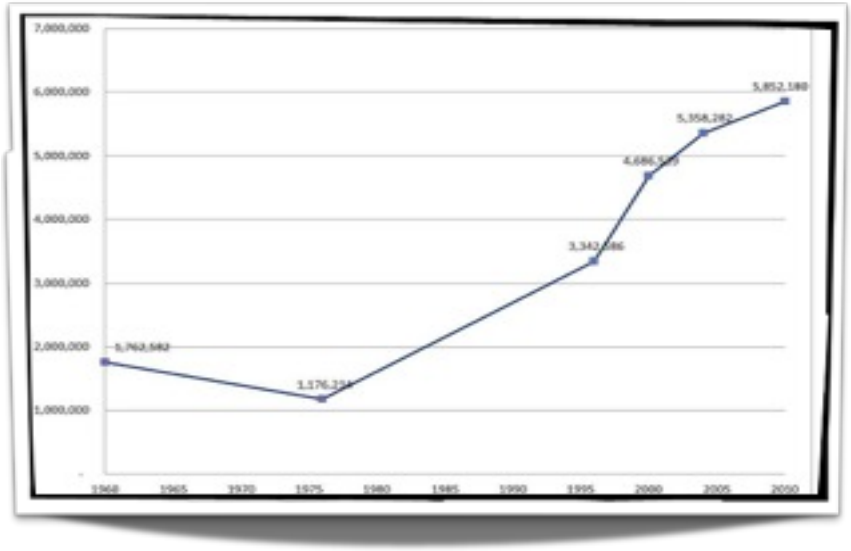
Visualizing Disenfranchisement Across the U.S.

To represent these differences visually, the cartogram in Figure 1 adjusts state boundaries for the rate of disenfranchisement in the voting age population.[122] Florida and other states that ban former felons from voting appear bloated in the map, while states in the Northeast and Midwest that only disenfranchise current prison inmates shrink in size.

[122] Ibid.



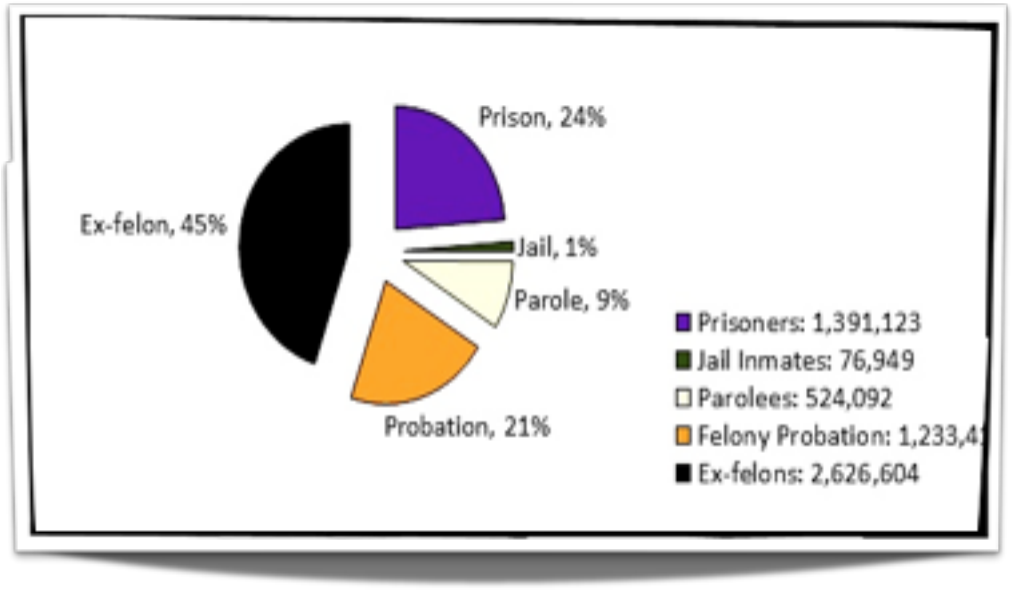
Millions are Denied the Vote. Many states have pared back voting restrictions since the civil rights era of the 1960s,[123] but four decades of growth in correctional populations has increased the number disenfranchised -- from 1.2 million in 1976 to 5.8 million in 2012.[124] A greater percentage of citizens are thus deprived of the vote today than in previous eras with stricter laws but smaller correctional populations. Most recently, in April 2016, Governor Terry McAuliffe signed an executive order restoring voting rights to Virginia felons no longer under supervision (though the status of felons released in the future remains unclear).



[123] Behrens, A., Uggen, C., & Manza, J. (2003). Ballot manipulation and the 'menace of Negro domination': racial threat and felon disenfranchisement in the United States, 1850-2002. American Journal of Sociology.

[124] Uggen, Shannon & Manza (2012).

Only One-Fourth Are Incarcerated. A full 75% of those disenfranchised are non-incarcerated probationers, persons on supervised release, and former felons no longer under supervision. These non-incarcerated probationers, parolees, and former felons are nevertheless expected to work, pay taxes, and otherwise fulfill the basic duties of citizenship. People subject to these laws thus point to "taxation without representation" as a major problem with felon disenfranchisement. [125]

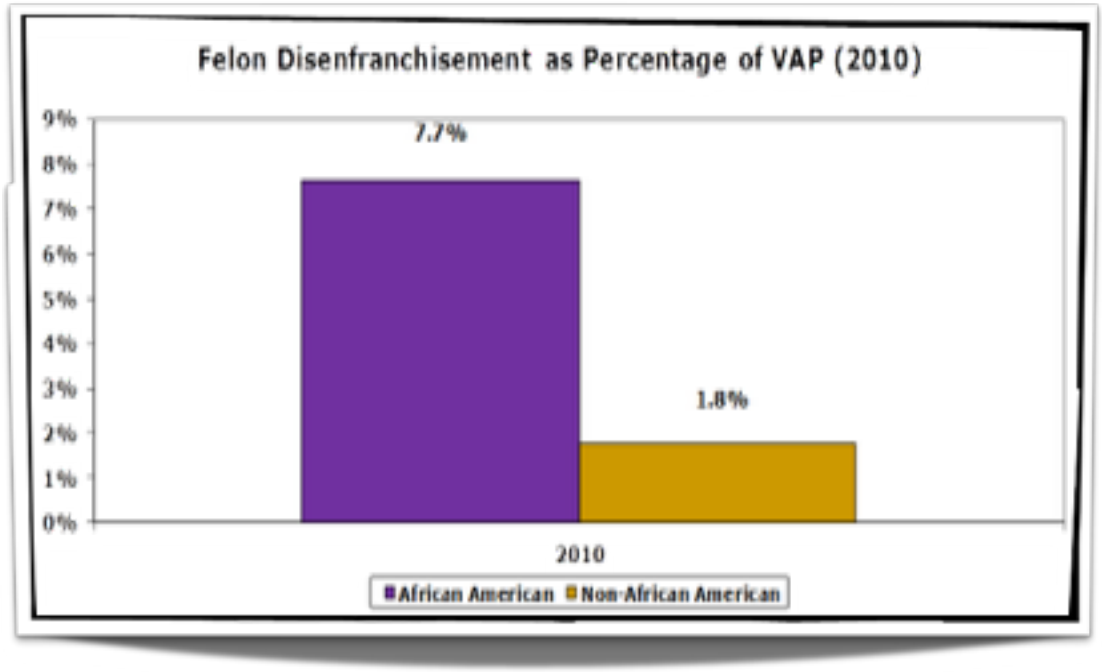


Disenfranchisement Increases Racial Inequality. Passage of US felon disenfranchisement laws accelerated in the Civil War and Reconstruction era, due in large part to the "racial threat" posed by newly-enfranchised slaves.[126] Felon disenfranchisement policies continue to disproportionately impact African Americans, with 1 in 13 being ineligible to vote in 2012 due to felony convictions –more than 4 times the rate of non-African American. Nationally, about 2.5% of the adult population is disenfranchised by virtue of a felony conviction, though this figure rises to 7.7% for African Americans.[127] Today, the restoration of felon voting rights has emerged as a powerful civil rights issue.

[125] Manza, J. & Uggen, C. (2006). Locked out: felon disenfranchisement and American democracy. New York: Oxford University Press.

[126] Behrens, Uggen & Manza (2003)

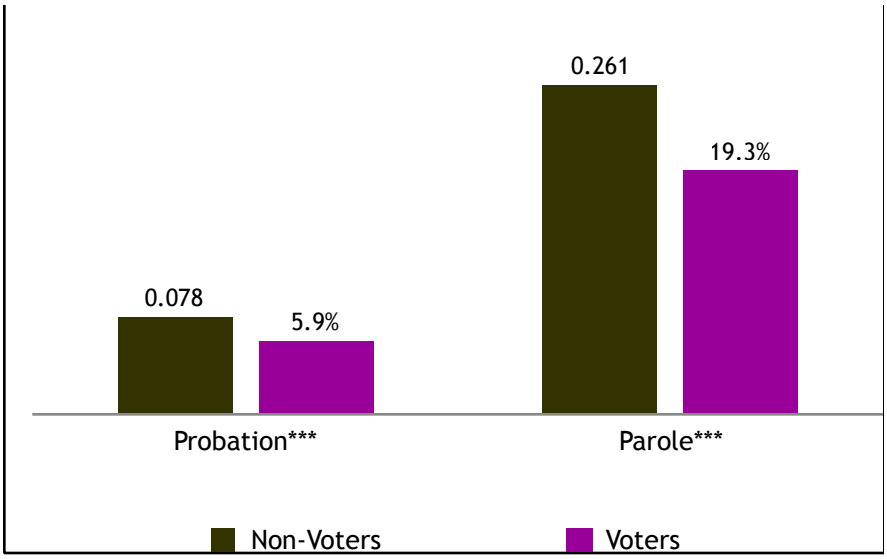
[127] Uggen, Shannon & Manza (2012)



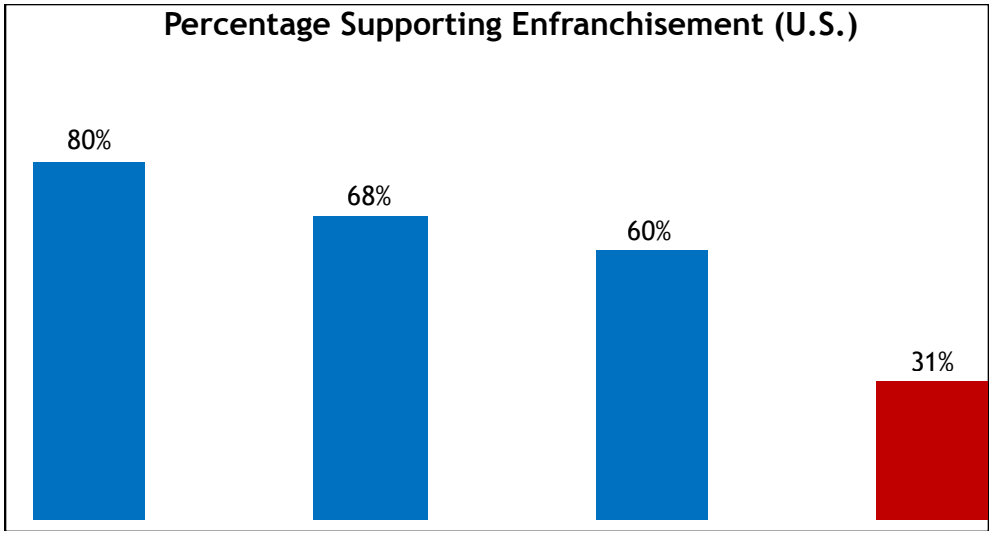
Voters Less Likely to Commit New Crimes. Although it is difficult to prove a strong causal link between voting and recidivism, voters are clearly less likely than non-voters to commit new crimes. A Minnesota study finds that voters in the 1996 elections were significantly less likely than non-voters to be rearrested from 1997 to 2000; about 16% of non-voters were rearrested, relative to only 5% of voters.[128] In Oregon, where probationers and parolees are eligible to vote, those who vote have significantly lower recidivism rates than those who do not.[129] Restoring the vote to former felons would certainly pose no threat to public safety. Voting is negatively correlated with subsequent crime and may support a former felon's identity as a law-abiding citizen.

[128] Uggen, C. & Manza, J. (2004). Voting and subsequent crime and arrest: evidence from a community sample. Columbia Human Rights Law Review.

[129] Uggen, C., & Inderbitzin, M. (2009). The price and the promise of citizenship: extending the vote to nonincarcerated felons. in Contemporary Issues in Criminal Justice Policy, edited by N. A. Frost, J. D. Freilich, and T.R. Clear. Belmont, CA: Cengage/Wadsworth.



Americans Favor Reenfranchisement. Arguments that strict felon disenfranchisement laws reflect public opinion are not supported by data. A national opinion poll conducted in 2002 found that 80% of Americans support reenfranchising those who have completed their sentences, 68% support voting rights for probationers, and 60% support voting rights for parolees.[130] This suggests that the 35 states that disenfranchise parolees and the 31 states that deny probationers are sharply at odds with public opinion. Public support only drops below 50% at the prison gate, as about 31% of U.S. residents



favor reenfranchising current inmates.

America is virtually alone in the world in extending disenfranchisement to those who are not currently incarcerated. Nations such as Canada, Denmark, and Israel generally permit inmates to vote while in

[130] Manza, J., Brooks, C., & Uggen, C. (2004). Public attitudes toward felon disenfranchisement in the United States. Public Opinion Quarterly.

prison, whereas nations such as the United Kingdom and Egypt ban prisoners from voting.[131] A 2009 study found that 65 nations maintained a general disenfranchisement provision for currently incarcerated prisoners, while 40 generally permitted even prisoners to vote.[132] The United States is clearly an outlier on the international scene, both for the broad scope of its disenfranchisement laws and for the large number of US citizens affected by these provisions.

Moving Towards Reenfranchisement

Based on this research evidence, states should move quickly to reenfranchise felony probationers, parolees, and those no longer under supervision. Restoring the vote to these groups would expand democracy, reduce racial disparities, enhance public safety, and accord with national public sentiment and international standards. Nationally, the trend over the past decade has been toward more inclusive legislation. Since 1997, 26 states have amended their felon disenfranchisement policies to expand voter eligibility. As a result of those reforms, more than a million people have regained the right to vote.

Although much of the legal change must necessarily occur at the state and federal levels, there is also an important part for county and municipal officials to play. There is less research literature to draw upon in this area, but I would offer the following recommendations based on my experiences studying felon disenfranchisement over the past 17 years.

Resist Prioritizing "Illegal Voting" Cases for Prosecution. I have testified several times on behalf of probationers charged with illegal voting in Hennepin County (Minnesota). In Minnesota, as in other states, voting while on probation or parole is a felony, punishable by heavy fines, lengthy extensions of probation or parole, and incarceration. The sign below, posted in 2016 in a Minnesota county probation office,

---

[131] Ewald, A., & Rottinghaus, B. (2009). Criminal disenfranchisement in an international perspective. Cambridge: Cambridge University Press.

[132] Uggen, C., Van Brakle, M., & McLaughlin, H. (2009). Punishment and social exclusion: national differences in prisoner disenfranchisement. In Criminal Disenfranchisement in an International Perspective, edited by Alec Ewald and Brandon Rottinghaus. Cambridge, UK: Cambridge University Press.

sends a dire warning to people on probation and parole. It is a tremendous waste of court and correctional resources to subject otherwise law-abiding probationers, parolees, and former felons to new felony charges simply because they voted. Prosecutorial discretion is often limited by statute invoting cases, but counties vary considerably in the extent to which they prioritize and punish American citizens for voting.

Clearly Inform People When They Regain the Right to Vote. When they enter community supervision, people are typically notified (verbally and in writing) of the conditions of their supervision and the rights and privileges that they will surrender. This includes the right to vote, as well as a dizzying array of other collateral sanctions. These warnings (reflected in the sign shown here) are likely to have a chilling effect on subsequent political participation, in part because people wish to avoid any chance of prosecution and in part because it is humiliating to be turned away at the polling place. For these reasons, it is crucial to notify individuals that they are now eligible to vote and to provide clear instructions and materials for doing so.

Facilitate Get-Out-the-Vote Efforts in Municipal and County Jails. Almost 750,000 people were incarcerated in local jails at year-end 2014.[133] About 60% of these inmates had not yet been convicted of crime but were instead awaiting court action on a current charge – and, among those who had been convicted, many were convicted of misdemeanors rather than felony-level crimes. County administrators and jail personnel can do much to facilitate or hinder voting and registration among these inmates, who retain their right to vote but often have difficulty exercising it due to their confinement.

Lobby for Legal Change. The opinions of district attorneys, sheriffs, police chiefs and other local officials carry great weight when legislatures consider changes to felon voting laws. It is much more difficult for legislators to oppose reform efforts when justice professionals stand united against disenfranchisement -- and make a convincing case that it wastes time and resources and distracts them from their vital work in protecting public safety.

[133] Glaze, L. E., Kaeble, D., & Minton, T. (2015). Correctional populations in the United States, 2014. US Department of Justice.

Expanding Employment Opportunities for People with Conviction Records
By National Employment Law Project

An estimated 70 million people in the United States – nearly one in three adults – have a criminal record that will show up on a routine background check.[134] Many people with records are discouraged from applying for work due to the "check-box" on many job applications that asks about conviction history, and too many employers arbitrarily exclude applicants with records without regard to their qualifications. **This creates a serious barrier to employment for millions of workers, especially in communities of color hardest hit by decades of over-criminalization.**

In response to this problem, **growing national attention has focused on removing questions about criminal records, or "banning the box," on job applications. Today, 24 states and more than 100 cities and counties have adopted this policy reform**, often in tandem with criminal justice reform priorities.[135] An increasing number of corporations

[134] Rodriguez, M. N., & Christman, A. (March 1, 2016). Research Supports Fair Chance Policies. National Employment Law Project.

[135] Rodriguez, M. N., & Avery, B. (June 2016). Ban The Box: US Cities, Counties, and States Adopt Fair Hiring Policies. National Employment Law Project.

have delayed conviction history inquiries as well in the White House's Fair Chance Business Pledge, including Google, Coca-Cola, Starbucks, and American Airlines.[136]

Barriers and Lost Opportunities

Finding a job is challenging for people with arrest or conviction records. **Nine out of ten employers now conduct criminal background checks for employment,[137] and many employers exclude people with records outright.** One study found that only 8% of 192,000 listed job advertisements were open to hiring an applicant with a record.[138] Even when people with records apply, a conviction record reduces the likelihood of a job callback by 50% among equally qualified applicants.[139] This impact is even more pronounced for Black and Latino applicants.[140] **The widespread use of background checks thus exacerbates racial and economic inequality.**

Predictably, the economy suffers when so many individuals are routinely denied employment opportunities. Men with conviction rec**ords accounted for about 34% of the unemployed prime working age men surveyed in a 2015 poll.[141] Economists estimate that the poor job prospects of people with felony records and formerly incarcerated people reduces the nation's gross domestic product for a single year by at least $78 billion**, compared to if those individuals were gainfully employed.[142]

Clearing the path to employment can make all the difference in the lives of people with records, while also increasing public safety and economic productivity. Studies find that employment is often the single most important influence on decreasing recidivism.[143] **Securing employment for formerly incarcerated people significantly increases their lifetime earnings and income tax contributions, boosts sales tax revenue, and saves government resources by reducing recidivism**.[144]

---

[136] Factsheet: White House Launches the Fair Chance Business Pledge, April 2016.

[137] Society for Human Resources Management (July 19, 2012). Background Checking: The Use of Criminal Background Checks In Hiring Decisions.

[138] Lichtenberger, W. (2006). Where Do Ex-Offenders Find Jobs? An Industrial Profile of The Employers Of Ex-Offenders In Virginia. Journal of Correctional Education.

[139] Pager, D. (2003). The Mark of A Criminal Record. American Journal of Sociology.

[140] Pager, D., Western, B., & Bonikowski, B. (2009). Discrimination In A Low-Wage Labor Market: A Field Experiment. American sociological review

[141] Appelbaum, B. (February 28, 2015). Out of Trouble, But Criminal Records Keep Men Out of Work. New York Times. Poll available in Kaiser Family Foundation Website.

[142] Bucknor, C. & Barber, A. (June 2016) The Price We Pay. Center for Economic and Policy Research.

[143] See e.g., Berg, M. T. & Huebner, B. M. (2011). Reentry And The Ties That Bind: An Examination of Social Ties, Employment, and Recidivism. Justice Quarterly.

[144] Economy League of Greater Philadelphia (September 2011). Economic Benefits of Employing Formerly Incarcerated Individuals in Philadelphia.

Fair-Chance Employment

In an effort to improve job opportunities for people with records, a growing number of state and local governments have removed the inquiry about conviction history on job applications for public-sector employers. Known as ban-the-box, this movement was sparked by All of Us or None, a grassroots civil rights organization led by formerly incarcerated and convicted people.[145] **More than 185 million people in the United States – over half of the U.S. population – now live in a ban-the-box jurisdiction**.[146]

Many jurisdictions are also implementing broader fair-chance policies to regulate the use of conviction records throughout the hiring process. The strongest of these policies incorporate federal anti-discrimination and consumer laws and best practices from the 2012 U.S. Equal Employment Opportunity Commission (EEOC) guidance, which directs employers to consider age of the offense, its job-relatedness, and mitigating circumstances or evidence of rehabilitation.[147] Studies show that hiring discrimination is most likely (76%) to occur at the first interaction (often the application submission),[148] and that personal contact with the potential employer can reduce the negative effect of an applicant's record by about 15%.[149] **Fair-chance hiring laws are thus most effective if they also delay the consideration of conviction history until after a conditional offer of employment.**

Fair-Chance Laws Work

Fair-chance laws have proven effective. For example, the City of Minneapolis found that removing the conviction history check-box from initial applications and postponing background checks until a conditional offer of employment decreased the amount of transactional work for city staff, did not slow down the hiring process, and resulted in more than half of applicants with convictions being hired.[150] In Durham County, North Carolina, the number of applicants with criminal records recommended for hire nearly tripled in the two years after its policy passed. On average, 96.8% of

---

[145] Emsellem, M. & Rodriguez, M. N. (January 2015). Advancing a Federal Fair Chance Hiring Agenda: Background Check Reforms In Over 100 Cities, Counties, & States Pave The Way for Presidential Action. National Employment Law Project.

[146] Rodriguez, M. N. & Avery, B. (June 2016). Ban the Box: US Cities, Counties, and States Adopt Fair Hiring Policies. National Employment Law Project.

[147] U.S. Equal Employment Opportunity Commission (April 25, 2012). EEOC Enforcement Guidance: Consideration of Arrest and Conviction Records In Employment Decisions Under Title VII of the Civil Rights Act of 1964.

[148] Pager (2003).

[149] Pager, D. (November 20, 2008). Sequencing Disadvantage: The Effects Of Race And Criminal Background For Low-Wage Job Seekers. Statement to the U.S. Equal Employment Opportunity Commission.

[150] Letter from City Council Member Elizabeth Glidden with Attachment of City of Minneapolis Conviction History Summary 2004-2008 YTD, March 16, 2009.

those with records recommended for hire in the County ultimately received the job.[151] In Atlanta, people with records comprised 10% of hires during the eight-month period following implementation of the City's ban-the-box policy.

Moreover, ban-the-box policies typically have a low cost of implementation. Removing the conviction history question from applications is a minimal expenditure. Incorporating the EEOC best practices into written policies and providing training to human resources staff can also be absorbed administratively. Enforcement activities, data collection to assess results, and policy compliance review may require more infrastructure, with varying costs depending on the existing systems in place.

Jurisdictions can improve efficiency and outcomes by partnering with community-based organizations in the implementation and enforcement of fair-chance laws. Local agencies can form stakeholder committees and formal partnerships with community-based organizations to advise in drafting effective ordinances, increase community outreach and awareness of the new law, and support enforcement by identifying violators and assisting complainants. These strategies have been applied with particular success in San Francisco, Seattle, and Washington, D.C.[152] Several agencies have also secured funding for grant programs with community-based organizations to conduct outreach and education with hard-to-reach, marginalized community-members.

Local Examples

A growing number of cities and counties have implemented policies to reduce employment barriers in locations where PICO is organizing. Some examples of strong policies in these locations include:

Alameda County, CA (County Resolution, 2007). Removes questions about convictions from county employment applications and delays record disclosure and background checks until after the employer makes a conditional offer. To protect against potential discrimination, a special unit in the Human Resources Department performs an analysis to determine if an applicant's conviction is related to the specific functions of the job.

[151] Atkinson, D., & Lockwood, K. (October 2014). The Benefits of Ban The Box: A Case Study of Durham, NC. The Southern Coalition for Social Justice.

[152] Rodriguez, M. N. & Polk, Z. (June 2015). Fair-Chance Implementation Case Studies For Government Agencies. National Employment Law Project.

Cincinnati, OH (City Council Motion, 2010). Removes questions about convictions from city employment applications and delays background checks until after the employer makes a conditional offer. When evaluating an applicant's record, the employer must consider whether the past offense directly relates to the job responsibilities, the applicant's age at the time of the offense, and any evidence of rehabilitation. Applicants must be given the opportunity to review the background check and challenge its relevance and accuracy.

Compton, CA (City Resolution, 2011). Delays background checks for applications with city or government contractor employers until after the employer makes a conditional offer, and prohibits the consideration of any convictions that are not job-related. When evaluating an applicant's record, the employer must consider whether the position provides the opportunity for the commission of a similar offense, whether the applicant has committed other offenses since the conviction, the nature and gravity of the offense, and time elapsed since the offense.

Dallas County, TX (County Resolution, 2015). Delays requesting conviction history for applications with county employers until an interview or prior to a job offer. When evaluating an applicant's record, the employer must consider how an offense relates to the position sought, the time elapsed since conviction, and evidence of rehabilitation. Applicants must be given the opportunity to review the background check and challenge its relevance and accuracy.[153]

Looking Forward

Ban-the-box policies are an important first step to reducing discrimination against jobseekers with records. It is the starting point, not the end point to advancing the goal of increasing the employment of people with records in all levels of the workforce. As a next step, jurisdictions can explore importing fair-chance principles into occupational licensing laws and extending mandates to government contractors and private-sector employers.[154] Nine states and over a dozen cities and counties have passed fair-chance hiring laws that apply to private employers.[155] Continuing to advance these reforms will help to restore hope and opportunity to the many qualified job-seekers with a record who struggle against significant odds to find work and to give back to their communities.

---

[153] Rodriguez & Avery (June 2016).

[154] See e.g., Rodriguez, M.N. & Avery B. (April 2016) Unlicensed & Untapped. National Employment Law Project.

[155] Rodriguez & Avery (June 2016).

ORLEANS PARISH BEST PRACTICES ANALYSIS

In key areas, Orleans Parish falls short of best practices for promoting community safety and reducing the number of people entangled in the criminal justice system. The county is missing opportunities taken by other communities to promote safety and justice.

Policing: Cities across the country have shown that is possible to reduce violence rates by building stronger, more collaborative relationships between their police departments and the community and by focusing policing resources on individuals most likely to commit violence. The Procedural Justice approach – outlined in the best practices section written by Traci Meares and detailed in the President's Commission on 21st Century Policing – requires the police to rebuild trust and credibility with the community. If implemented thoroughly, it works. New Orleans began implementation of NOLA for Life a multi-pronged approach that includes the Group Violence Reduction Strategy as well procedural justice trainings for law enforcement. While these pieces have been implemented there has been a recent upswing in homicides in New Orleans and there are opportunities to strengthen the interventions being implemented to lower the number of people lost to urban gun violence as well as increasing the trust between communities and police officers.

Police accountability: New Orleans Police Department is currently under a Consent Decree with the Department of Justice due to DOJ findings that policies and practices that the Police Department was participating in were unconstitutional. While the Police Department is mandated to comply with changes to their policy and procedures it is not clear that community members are currently experiencing police officers differently.

In the 2014 Consent Decree Report on Bias Free Policing, the disproportionate contact that African Americans have with police compared to their White counterparts is clear:

> "It is critical however, that stops by NOPD are analyzed by not only their outcomes generally, but with reference to race/ethnicity, gender, and age. African-Americans represented 66 percent of all stops compared with 29 percent for Whites, 3 percent for Hispanics, and 1 percent for Asians. The distribution of stops is roughly similar to the racial makeup of New Orleans, of which 60 percent is African-American, 30 percent is White, 5 Hispanic, and 3 Asian.
> In addition, 24 percent of all stops of African-Americans ended in an arrest compared with 19 percent for Whites, 18 percent for Hispanics, and 11 percent for Asians. Of all searches that occurred, 78 percent were of African-Americans compared with 19 percent for Whites, 2 percent for Hispanics, and 0 percent for Asians. However, of all searches resulting in the finding of contraband, 80 percent are from African-Americans, 18 percent from Whites, and 1 percent from Hispanics."

Criminalizing poverty: One of the major reasons why Orleans Parish's jail system is so over-crowded is that while pretrial Services has instituted a risk assessment tool there still is often a monetary component that blocks those unable to afford bail from being released while awaiting trial. The

Louisiana Supreme Court has moved to mandate use of the risk assessment tool, there are hopes that the Louisiana Supreme Court will oversee the implementation.

Responsible prosecution: It is important that Orleans Parish Prosecutor Cannizzarro provide public leadership in reducing the number of people entangled unnecessarily in the criminal justice system and eliminating racial disparities. Responsible prosecution practices include reporting on racial disparities in charging, providing pretrial services within 24 hours to all people who've been arrested and seeking to minimize the length of probation and parole. The best practices section on Safe and Just Prosecution shows that it is possible to hold people accountable for breaking the law while prioritizing the needs of victims in the community, and seeking to limit the number of people involved in the criminal justice system.

Reentry: The Louisiana State Department of Corrections has launched an initiative in 5 parishes including Orleans to reduce recidivism rates by fifty percent. There is a pre-existing taskforce in New Orleans ensuring that Orleans Parish will be the first parish to launch the initiative. The task force promises to create a stronger community partnership around re-entry issues and the needs of the community.

While New Orleans has a fair hiring policy in place it is not clear that the policy has resulted in an increased number of formerly incarcerated community member gaining employment. New Orleans also has created a small number of units for formerly incarcerated community members, given the number of people returning to the community from incarceration, the number of units does not meet the current need. Recently HUD shared a clarification for local housing authorities stating that no where in HUD's policies are formerly incarcerated people banned from accessing HUD subsidized units, leaving the door open for Orleans Parish to change current policy blocking formerly incarcerated individuals from accessing or living with their families in HUD subsidized units.

On September 11th, MICAH in partnership with other organizations, will be hosting a Welcome Home Sunday where formerly incarcerated and directly impacted leaders and clergy will lay out their plans for a more inclusive re-entry system in Orleans Parish including the need for jobs, healthcare, housing and the lack of employers willing to hire formerly incarcerated community members. Formerly incarcerated community members and their families will be encouraged to register to vote at this event.

When combined together, the best practices adopted by other cities and counties to both reduce violence and incarceration provide a road map for Orleans Parish to dramatically reduce the number of people placed in jail each year, and under the supervision of law enforcement – perhaps by as much as one half. These best practices will also reduce glaring racial inequities in the region. The key is for those in positions of leadership to take leadership for the common good of New Orleans and Orleans Parish.

CALL TO ACTION
by Dr. Robert "Biko" Baker

So now that you've come to the close of this report, my question for you is simply: "**What are you going to do about it?"** 78

There was a time, perhaps, when elected officials and decision makers could claim that they were unaware of the drastic impact that their bad policy decisions were having on their communities. After all, we live in the era of big data. 20 years ago our policy makers did not have the same technological tools that we are blessed with today. It's likely that **few could have predicted that the tough on crime policies of the 1990s would still be having such a dramatic impact a generation later.**

Today, the impact that the over policing of our communities is in our faces everyday. But the truth is, **we don't need statistical models to that see our current system is broken**.

Whether it's the nightly news reports of dead Black and Brown bodies laying on pavement or the haunting absence of our loved ones who face long prison sentences, we can no longer afford to turn away from the trauma that the prison industrial complex is inflicting on our nation. Those of us who come from communities that have been ravaged by this broken system just ask that you stand with us. Don't look away from the pain festering in places like Ferguson and Baltimore, rather, run towards the trauma. **Do something about it**.

You are now armed with enough data and best practices to help define a new reality for future Americans. **We need bold leaders who are willing to step to the front and challenge the status quo.** If places like Oakland can see dramatic drops in violence, so can your community. We just need leaders who are willing to demand that our local and state governments try new approaches. If there's anything this report has shown…it's that **we can transform our communities if we work together.**

The time for a better future is now. **Do your part**, use the data in this report to help make sure that all of us can live free.

ACKNOWLEDGMENTS

This report, and others like it for 20 local governments in the U.S. (Alameda CA, Contra Costa CA, Dallas TX, Duval FL, Essex MA, Franklin OH, Fresno CA, Hamilton OH, Hennepin MN, Hillsborough FL, Jefferson County AL , Los Angeles CA, Marion County IN, Merced CA, Orleans Parish LA, Riverside CA, Sacramento CA, San Bernardino CA, San Diego CA, St Louis MO), was a joint effort of PICO and COWS. Lead direction at PICO was provided by Andrea Marta, Tonesha Russell, and Gordon Whitman. Lead direction at COWS was provided by Joel Rogers, working with Professor Michael Massoglia, of the University of Wisconsin-Madison, who provided lead academic direction. Yair Kaldor, Javier Rodriguez Sandoval, and especially Walker Kahn, all graduate students at UW-Madison, took lead in data retrieval and analysis and the editing of text. Local research, testimonies and scorecards were the work of grassroots leaders, clergy and staff at PICO member organizations and partners in each county. Report layout and final production was done by Biko Baker, of Render. Thanks to them all!