

WHY DOES OUR JUSTICE SYSTEM NEED AN OVERHAUL?

The U.S. accounts for over 20% of the world's prison population but only 5% of the world's total population. While many justice reform advocates share a vision of ending mass incarceration, what does the concept of "criminal justice reform" really look like across the system? In truth, the movement is an intricate, concerted effort in changing a multi-layered problem, from arrest to reentry. Click each category to read more.



Mass Incarceration

In Jonathan Simon's *Mass Incarceration on Trial*, he asserts that the conditions mass incarceration perpetuates are "fundamentally, irreparably inhumane." With nearly 2.3 million people incarcerated, the current system cannot hold.

Youth Justice

Significant research on brain development has posed looming questions around the ways we involve youths with our justice system.

Beyond

This tool provides a snapshot of criminal justice issues across the system, but readers are also encouraged to engage further on two important topics not covered here: immigration detention and digital incarceration.



Pretrial

The majority of people in U.S. jails are awaiting trial. But the guiding notion of "innocent until proven guilty" does not protect them from the collateral consequences of arrest and detainment.



Sentencing

Sentencing disparities based on income and race continue to plague our system.



Reentry

Even after serving their time, formerly incarcerated citizens face significant barriers to housing, employment, and family reunification - often leading to re-arrest and a repeat of the cycle.



Policing

An average of 10 million arrests are made each year; fewer than 5% are for serious violent crimes. Over-policing communities continues to drive mass incarceration.



Courts

Prosecutors hold enormous power and discretion. Pressure to rack up "guilty" verdicts have led to an overuse of plea deals, even when an arrestee is innocent.



Incarceration

Conditions of confinement are designed to dehumanize, deconstruct identity, and punish rather than rehabilitate.

**TAKE
ACTION**

POLICING

Citizen Rights

The Fourth Amendment protects against unreasonable search and seizure of a person, property, and personal effects. Law enforcement pushes these boundaries with stop and frisk practices, data privacy intrusion, and coerced confessions and consent searches.

Particularly for vulnerable populations - black communities, LGBTQ+ individuals, and people with mental illness, for instance - fear and distrust of police often means they will not turn to them in a time of need.

Use of Force

Through post-9/11 programs, nearly 65% of police departments have acquired equipment and weapons from the military. Every year, nearly 700,000 people ages 16+ report interactions with police where use of force is used; 75%–83% of them report excessive force. Being a low-income Black male significantly increases the chances of experiencing police use of force like takedowns, hard handcuffing, and lethal force.

Reform efforts have focused on community-building, demilitarization, more oversight and accountability, data transparency, and a move toward a "guardian" model of policing that focuses on relationships and empathy.

Criminalization & Over-Policing

Many laws criminalize regular activities (i.e. jaywalking, sleeping on the sidewalk) and low-level offenses (marijuana use, selling untaxed cigarettes - See Eric Garner). "Broken windows" policing allows for an inconsistent, often quota-driven, enforcement of these laws, having a disparate impact on people who are unhoused, people with mental illness, low income communities, and people of color.

Systemic Bias

Communities of color experience over-policing in their neighborhoods, disparate application of stop and frisk, and higher rates of arrest than White residents. Studies have also shown higher rates of police use of *excessive* force in communities of color.

With the highly publicized killings of multiple unarmed Black men and women, advocates have advanced an overdue reckoning around lethal force against Black and Brown people.

Additionally, LGBTQ+ people are overrepresented at every phase of the justice system, with far higher rates of arrest than straight, cisgender people.

PRETRIAL

Money Bail

The bond industry is a \$1.4 billion-a-year enterprise that profits from people and their families awaiting a fair trial who cannot afford bail.

Research has shown that money bail does not actually increase public safety, and it places a heavy burden on low-income families and people of color. Instead, advocates push for risk assessments and court appearance reminders to replace a money-based system that favors the wealthy- of course, with a caveat: risk assessments can also create disparate outcomes.

Jail Conditions

Jails are environments rife with violence, drug overdoses, sexual assault, neglect, and high rates of illness. People detained report vermin infestations, unsanitary conditions, overcrowding, abuse from guards and other detainees, untreated mental illnesses, and medical neglect. Suicide is the leading cause of jail deaths.

Advocates fight for third party jail oversight, easier family visitation, access to healthcare, and the release of people awaiting trial who do not pose an immediate threat to public safety.

Collateral Consequences

Even if a person is innocent or falsely accused, being detained pretrial can set off a chain of life-altering events, such as losing one's job, housing, custody of a child, or public benefits. In addition, even if a person is found innocent, their arrest might remain on public record or easily searchable on the internet, opening them to employment and housing discrimination.

Home obligations, harsh conditions of detention, and/or financial pressure from accruing bail interest are all conditions that lead people to accept plea deals, whether or not they are guilty, in order to avoid the pain and uncertainty of awaiting trial.

Racial Bias

Black men are less likely than white men to be released on their own recognizance pretrial, more likely to be ordered to produce bail as a condition of release, and tend to receive bail amounts twice as high as white defendants.

COURTS

Prosecutors

A backlog in the courts. Right to a speedy trial. The public pressure of "tough on crime" rhetoric. Prosecutors have an incentive to close cases - and close them quickly. Enter *plea deals*, which help prosecutors close 80-95% of criminal cases. Often, accepting a plea deal is far more appealing than contending with the collateral consequences of pretrial detention or the risk of receiving a harsher sentence after going to trial.

Prosecutors have enormous discretion in who to prosecute and for what and are arguably the most important drivers of mass incarceration. Some advocacy groups have introduced "court watchers" who record how prosecutors exercise their discretion, encouraging more accountability.

Judges

Just as prosecutors do, judges hold significant power in their ability to use discretion.

Selected through elections or political appointments, judges hold highly politicized positions of power for a job that is meant to be objective. A lack of racial, ethnic, and gender diversity lends itself to trends of disparate treatment that manifest in the larger justice system, such as harsher sentencing for Black men and women.

Victim Rights

Survivors of crime have an important space in the justice reform movement. Victims have a right to privacy protection, a restoration of their feelings of safety, a supportive space to be heard, and compensation for their losses.

Victims are often overwhelmed with navigating their rights in the courts system, especially during trial and sentencing or undergoing questioning.

Racial Bias

The court system is comprised disproportionately of white judges (with some jurisdictions having *only* white judges) and white prosecutors. Arguably, this creates an inherently biased environment where Black people are less likely than White people to receive reduced pleas and more likely to receive jail time in their plea deals.



SENTENCING

Breakdown of Jury Trials

Advocates point to mandatory minimums and harsh sentencing as primary contributors to what is referred to as the "trial penalty" - the cost of exercising one's constitutional right to a trial rather than accepting a plea deal. If the trial is lost, it will result in sentences that are two to three times longer than if the defendant took the plea. Choosing a trial instead of striking a bargain with a prosecutor is a gamble that most people will not take, even if they are innocent: less than 5% of criminal cases actually go to trial with a jury of peers.

Death Penalty

Capital punishment is still legal in 27 states and supported by more than half of Americans, but opponents pose many arguments besides moral objection. The application of the death penalty is costly, geographically and racially biased, and does not actually deter people from violent crime. Systemic problems (as well as a number of DNA-supported exonerations) lend to the probability that innocent people still end up on death row. Death penalty cases last for years, often putting an additional burden on victim families.

Efficacy

Our current system relies heavily on incarceration as a means of addressing crime, but long sentences have "diminishing returns." Harsh sentences not only have minimal impact on deterring crime but they also might even make communities less safe.

Additionally, minimum sentencing laws such as Three Strikes and cocaine vs. crack cocaine statutes disproportionately impact Black men and their communities.

Racial Bias

Sentencing disparities by race persist within the system, and this is particularly of concern with the death penalty. Black people are more likely to be sentenced to death than white people for similar crimes and are more likely to receive a death sentence when the victims are white.

On average, Black men receive longer sentences than White men for the same crimes, even when other factors are accounted for like prior arrests.

INCARCERATION

Prison Conditions

The majority of people in prison have experienced early childhood trauma and show higher rates of PTSD than the general population. The dehumanizing and often violent prison environment is not designed to address these underlying contributors to antisocial behaviors and in many cases may even exacerbate them.

Prison for Profit

While they only comprise a small percentage of the system, private prisons yield higher recidivism, more violence, and increased financial burdens on communities. Government-run facilities also contract with private companies that profit from phone calls, commissary, prison labor, and monitoring systems.

LGBTQ+ Populations

Prisons are not designed to serve LGBTQ+ individuals. For instance, people who are transgender might be placed in facilities based on their birth sex, not gender identity, are exponentially more likely to experience sexual assault, and due to safety concerns are often placed in solitary confinement for long spans of time.

Slave Labor

Forced labor continues to be a common practice in prisons, as permitted by the 13th Amendment abolishing slavery "except as punishment for a crime." Prison labor spans from janitorial work to picking cotton, to jobs that produce wares sold to the public.

Even in cases of voluntary labor, wages are an average of 86 cents per hour, and some states continue to pay nothing. In the 2022 midterm elections, four states passed ballot measures rejecting slave labor as punishment for a crime.

MORE...

Women in Prison
Visitation & Calls
Solitary Confinement
People with Disabilities

Healthcare

Incarcerated people have higher rates of illness yet very limited medical care. In many prisons, they must pay relatively high fees for doctor visits and medication, and an inability to afford these fees impedes their access to care.

COVID-19 presented an additional challenge in protecting people's health within prisons. Advocates called for more transparency, PPE access, vaccination distribution, and standardized sanitization practices.



INCARCERATION

Women in Prison

Incarcerated women - disproportionately, Black women - are a special population that requires a trauma-informed approach to justice, demonstrating high lifetime instances of PTSD, sexual victimization, and intimate partner violence.

Additionally, in many states, women's gynecological health needs are unmet, and they pay high prices even for menstruation products. The shackling of pregnant women in prisons is of urgent concern, and prison childbirth practices have serious health implications for mother and child.

Visitation & Calls

Staying connected to the outside world is a critical piece of recovery, rehabilitation, and mental health, and correlates to a reduction in prison assaults. Families experiencing incarceration have multiple barriers to staying in touch. Many travel hours on tight budgets and risk getting turned away by the facility upon arrival.

The privatization of communication services has led to exorbitant prices for phone calls, letters, and video visitation, placing an undue burden on families.

COVID-19 additionally created a shift in visitation policies, isolating people from in-person contact for months at a time.

Solitary Confinement

By the United Nations' standard, solitary confinement beyond 15 consecutive days constitutes as a form of torture. Still, most prisons use extreme isolation as a catch-all method of control.

Solitary confinement causes lasting psychological and neurological damage, exacerbates mental illness, increases instances of self harm and suicide, and even takes a toll on the wellbeing of corrections staff.

People with Disabilities

Given the state of medical care in prison, it can be a cruel and neglectful place for someone with a disability or the elderly. The majority of people in prison have cognitive disabilities and mental health conditions.

Prisons are ill-equipped to accommodate physical disabilities. Being blind, for instance, is an isolating and even dangerous position to be in. Even when adaptive equipment is provided, prisons are not obligated to offer the training to use them.

REENTRY

Discrimination

Upon release, and often years following, people with criminal records face housing and employment discrimination that precludes them from reintegrating and creates a domino effect of consequences (i.e. inability to regain child custody, pay restitution, or secure educational loans). Advocates focus their efforts on expungement and record sealing, as well as legislation to make people with criminal records a protected class through "Ban the Box" laws.

Disenfranchisement

Even after serving their sentence, people with felony records are denied the right to vote in many states. This sends a strong message about a person's citizenship, acceptance in society, and fundamental rights.

Professional Barriers

In many jurisdictions, people with criminal records cannot obtain occupational licenses to advance their career, including licenses to cut hair, conduct sales, or do construction.

Sex Offender Registry

While sex offenses are an oft-avoided topic even in reform spaces, it is important to note that the registry is not a mechanism of foolproof justice. Advocates who work with trafficking survivors attest to the fact that victims of child sex trafficking can end up on the registry after being prosecuted alongside their traffickers.

Additionally, the registry and the regulations that come with it place a significant burden on an individual's ability to establish stability after prison and may make recidivism more likely.

Parole & Probation

Harsh parole stipulations, which are not individualized to respond to a person's specific reentry needs, send large numbers of people back to prison for non-criminal reasons such as not landing a job quickly enough or showing up late to an appointment. Parole and probation officers have unchecked power and discretion, including the ability to dismiss Fourth Amendment protections. Racial disparities persist in both length of probation and parole, and supervision violation charges.



YOUTH JUSTICE

Youths in Adult Prisons

In 2010, 16-year-old Kalief Browder was detained on Riker's Island and, after refusing to accept a plea deal for a crime he did not commit, was held for three years without a trial. After enduring years of solitary confinement and abuse within Rikers, Kalief was finally released, but shortly afterward tragically took his own life.

Youths are 36 times more likely to take their own lives when held in adult jails and prisons. What is more, bias toward Black and Brown boys often causes judges, prosecutors, and juries to view them as adults and treat them as such, leading to stark disparities in how they are approached at every turn in the system.

School to Prison Pipeline

Schools with strict exclusionary discipline policies, such as suspensions and expulsions, show a causal link to being justice-involved as adults.

Schools that use school resource officers, established in partnership with local law enforcement, arrest twice as many children for nonviolent "disorderly conduct." Again, students of color experience a disproportionate impact from these school policies.

Foster Care to Prison Pipeline

Nearly 450,000 children circulate foster care every year, and close to 90% of them will interact with the juvenile justice system, with an increased likelihood if the child is in a group home.

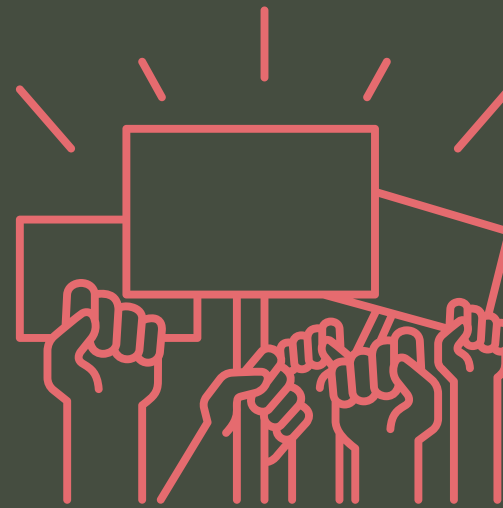
What is more, when a child leaves foster care at age 18, they often have no supports to help them succeed.

A Better Way

The adult brain does not finish developing until mid-20s, and researchers have acute insights into how early childhood trauma impacts adolescent behaviors. Proponents of youth justice reform argue for alternative approaches to locking away developing minds such as: diversionary programs when youths get into trouble, stronger mental health supports in schools and communities, accessible tools for parents to address behavioral issues, easier access to youth drug treatment, and culturally conscious, trauma-responsive, age-appropriate environments when institutionalization is necessary.




TAKE ACTION



CARE


Systems won't be held accountable if no one pays attention. Stay educated on the issues. Listen to people's stories. Challenge your predispositions about justice and punishment. Educate others, and call out employment and housing discrimination when you see it. Fight the stigma and openly acknowledge the humanity of incarcerated people.

CHALLENGE



Donate to organizations litigating for civil rights and ethical practices in the system. Demand accountability with law enforcement, and at the same time foster collaborative relationships to redefine what it means to "serve and protect." Urge your representatives to push for transparency and accountability in every aspect of the system. When others talk about "public safety," orient the conversation to evidence-based solutions such as addressing broken social systems rather than leaning on incarceration as the catch-all.

CHANGE



Vote in favor of ballot measures that end inhumane practices such as forced prison labor. Ask your representatives to support decriminalization and re-sentencing legislation, as well as redirect money from incarceration to communities. Vote out prosecutors and judges who don't openly support justice reform. Donate, volunteer for, and promote organizations that advance alternatives to incarceration, community interventions, trauma-responsive treatment, harm reduction, and violence interruption.



**Transformative
Justice Solutions**

www.transformthework.com

Transformative Justice Solutions is a Washington, D.C.-based company offering strategic leadership consulting for justice organizations. TJS provides organizational development consulting, Speakers Bureau training and design, justice internship management, as well as extensive trainings for advocate and survivor engagement in the realm of transformative justice.

(c) 2022