

TRANSFORMING THE SYSTEM



PROMOTE COMMUNITY SAFETY THROUGH

Alternatives to Incarceration

Our criminal justice system should ensure that all individuals feel safe and secure in their communities. The criminal justice system should be administered in a fair and just manner and should incorporate mechanisms to hold criminal justice actors who misuse their power accountable.

However, our policies have been overly punitive and have created incentives that promote inefficiency, lack of transparency, racial disparities, and high levels of incarceration. To address these issues, our criminal justice policies should have a clearly defined mission of substantially reducing incarceration, taking a step toward transforming the system into one that reflects our nation's commitment to equal treatment, accountability, and fairness. These policies should incentivize the reductions of the incarceration rate, work to eliminate unfair racial disparities, and aim to heal communities that have been harmed by the high rates of incarceration through the incorporation of restorative justice practices and the creation of community healing spaces.

Committing to reducing incarceration

Criminal justice policies should seek to substantially reduce¹⁷ incarceration, which are at unacceptable levels.¹⁸ Criminal justice officials should be educated about the importance of carrying out this goal, fostering an environment for transformation.

¹⁷ Ibid. See also Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, 2012.

¹⁸ See generally Roberts, *supra* note 2.

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For its part, the **administration** should:

- ▶ Draft an Executive Order—based on the executive authority to set prosecutorial priorities and to manage the federal prisons system—that states and federal law enforcement agencies should prioritize policies and practices that reduce the population of people who are imprisoned and prioritize community investment over imprisonment as a tactic for ensuring that the law is enforced;¹⁹
- ▶ Require local and state grantees of federal funds relating to law enforcement activities to provide information relating to specific demonstrable compliance with Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, which prohibits discrimination based on race, color, or national origin in their applications to the federal government;²⁰
- ▶ Establish a National Taskforce or Commission on Justice “to review and evaluate all components of the criminal justice system for the purpose of making recommendations to the country on comprehensive criminal justice reform;”²¹
- ▶ Establish an interagency working group to develop a strategy for the elimination of racial and ethnic discrimination in the United States; and
- ▶ Take steps to ensure that pardons are used more extensively to address injustice in the criminal justice system, including providing additional resources to the Pardons Office.²²

The **Department of Justice (DOJ)** should:

- ▶ De-prioritize the prosecution of less serious crimes and ensure that prosecutors have incentives to employ non-incarceration alternatives that do not result in criminal records by evaluating prosecutors on their use of non-incarceration alternatives;
- ▶ Ensure that the U.S. Department of Justice Civil Rights Division’s (CRD) standard for initiating investigations into law enforcement agencies with a pattern and practice of discrimination reflects all legal and constitutional obligations and allows for

19 *Heckler v. Chaney*, 470 U.S. 821 (1985); *Reno v. American-Arab Anti-Discrimination Committee* 525 U.S. 471 (2000).

20 Submission of The Opportunity Agenda to the President’s Task Force on 21st Century Policing, Feb. 12, 2016.

21 Final Report of the President’s Task Force on 21st Century Policing, President’s Task Force on 21st Century Policing (2015), http://www.cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

22 Josh Gerstein, “Obama’s Drug-Sentencing Quagmire,” *Politico* (Jan. 5, 2015), <http://www.politico.com/story/2015/01/barack-obama-drug-sentencing-policy-113954?o=2>.

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investigations of all police departments that have reportedly violated the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141;²³

- ▶ Provide the CRD with additional capacity and resources to further meet the need to hold criminal justice officials accountable; and
- ▶ Coordinate the work of the CRD with that of other divisions within the DOJ, including the Office of Community Oriented Policing Services (COPS), to ensure that police departments that are currently under investigations or that have outstanding cases for constitutional violations, are not awarded grants to hire additional police officers.²⁴

Congress should pass legislation that:

- ▶ Aims to reduce the prison population, consistent with the Reverse Mass Incarceration Act, which is a proposal for comprehensive reform that has not been introduced yet.²⁵

Congress, and **local** and **state legislatures**, and the **local, state,** and **federal executive branches** should adopt legislation and/or policies that do the following:

- ▶ Require training for educators, school administrators, criminal justice actors, mental health professionals, and social service providers on the effects of mass incarceration and the promotion of alternate responses to misconduct that do not include criminalization;
- ▶ Review existing laws and consolidate and/or eliminate redundant criminal laws;²⁶

23 The Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141 states:

(a) Unlawful conduct

It shall be unlawful for any governmental authority, or any agent thereof, or any person acting on behalf of a governmental authority, to engage in a pattern or practice of conduct by law enforcement officers or by officials or employees of any governmental agency with responsibility for the administration of juvenile justice or the incarceration of juveniles that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.

(b) Civil action by Attorney General

Whenever the Attorney General has reasonable cause to believe that a violation of paragraph (1) has occurred, the Attorney General, for or in the name of the United States, may in a civil action obtain appropriate equitable and declaratory relief to eliminate the pattern or practice.

24 The Opportunity Agenda, *Solutions for Equal Justice and Safety Accountability in Federal Funding to Local Police Departments*, February 2016.

25 "The Reverse Mass Incarceration Act would contain four main components: (1) a new grant of \$20 billion in incentive funds over 10 years to states; (2) a requirement that in order to receive funds, states reduce prison populations by 7 percent every three years without increasing crime rates; (3) a clear methodology for the amounts states receive; and (4) a requirement that federal funds are used by states for evidence-based programs proven to reduce crime and incarceration." Lauren Brooke-Eisen & Inimai Chettiar, Brennan Center for Justice, *Reverse Mass Incarceration Act 7* (2015).

26 *Overcriminalization*, Right on Crime, <http://rightoncrime.com/category/priority-issues/overcriminalization/>, (last visited 7 July 2016).

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- ▶ Recommit to international human rights and domestic civil rights norms and principles by allowing for inspections of U.S. prisons by United Nations committees, complying with human rights standards for racial equity, and incorporating human rights into employee trainings, orientations, and handbooks for employees in institutions within the criminal justice system;
- ▶ Incorporate the voices of people who have been directly affected by the criminal justice system, including formerly incarcerated people, such as members of JustLeadership and the National Council for Incarcerated and Formerly Incarcerated Women, and survivors of police violence, in substantive decision-making processes;
- ▶ Establish local and state taskforces on justice “to review and evaluate all components of the criminal justice system for the purpose of making recommendations é on comprehensive criminal justice reform” for that particular locality;²⁷

The **U.S. Department of State** in collaboration with the **U.S. Department of Justice** should develop an outreach strategy to ensure that all law enforcement agencies comply with treaty obligations and human rights norms.

In addition to pressuring government officials to support the above actions, **advocates, activists, cultural workers and artists, and civil society** should:

- ▶ Continue to conduct widespread public education about the problems with mass incarceration, including the community harms, lack of fairness, inefficiencies, and costs;
- ▶ Adopt a framework that allows for issues experienced by community members with intersectional identities, including women of color, black women, Muslim youth, Native American women and youth, LGBTQ people of color, transgender people of color, et al., to remain central to the conversation. This may include ensuring that speakers at rallies represent diverse backgrounds, promoting diversity among spokespeople who advocate for transformation, and continuously engaging in self-reflection to ensure that voices are not being silenced within the movement for transformation;²⁸
- ▶ “At protests, demonstrations, and other actions calling attention to state violence,

²⁷ Final Report, *supra* note 21, at 85.

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include the faces, names, and stories of Black women alongside those of Black men,"²⁹ as well as others who have experienced state violence;

- ▶ Uplift stories that highlight how the criminal justice system has affected Native American people, whose stories have been absent in much of the mainstream media although they have incarceration and police killing rates comparable to that of African Americans;³⁰
- ▶ Incorporate the voices of people who have been directly affected by the criminal justice system, including formerly incarcerated people and survivors of police violence;
- ▶ Adopt communications strategies that have been shown to effectively educate the public about the harms of mass incarceration and implement the messaging tools in the toolkits that accompany this report to ensure that an effective and consistent criminal justice narrative is adopted;³¹ and
- ▶ Review the demands in this Report as well as the shortened demands in the accompanying fact sheets and devise demands that are specifically tailored to address local realities.

28 Kimberle Williams Crenshaw & Andrea J. Ritchie, African American Policy Forum, Center for Intersectionality and Social Policy Studies, *#SayHerName: Resisting Police Brutality Against Black Women*, (2015), http://static1.squarespace.com/static/53f20d90e4b0b80451158d8c/t/560c068ee4b0af26f72741df/1443628686535/AAPF_SMN_Brief_Full_singles-min.pdf. Policy platforms should be developed using an intersectional gender and racial lens to ensure that comprehensive solutions to state violence are being built and that the myriad ways in which it affects the lives of all Black people are addressed. Skills to talk about the multiplicity of ways in which state violence affects all Black women and girls should be continuously developed. In so doing, stakeholders can move beyond a frame that highlights only killing. All Black women—transgender, non-transgender, and gender-nonconforming—must be included in this reconceptualization.

29 Ibid.

30 See Lakota People's Law Project, *Native Lives Matter 1* (March 2015). Much of the rhetoric has been justifiably dedicated to African Americans in urban areas, who certainly suffer from disproportionate criminal justice outcomes. However, statistics uncovered and compiled by the Lakota People's Law Project demonstrate that American Indians, in fact, suffer the most adverse effects of a criminal justice system that consistently reifies itself as structurally unjust. Ibid.

31 See generally Jill Mizell & Loren Siegel, *An Overview of Public Opinion and Discourse on Criminal Justice Issues* (Aug. 2014).

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Justice Based on Healing and Forgiveness:

SENTENCING IN A MURDER CASE³²

In 2010, 19 year-old Conor McBride fatally shot his girlfriend, Ann Grosmaire, following a days-long dispute. He turned himself in to the local police. He faced the mandatory sentence of life in prison, with the possibility of the death penalty. There was no place in this system, however, to address the sudden and bewildering emptiness that her death caused her parents, Kate and Andy Grosmaire. The Grosmaires were unable to process that their daughter was killed by the man they had expected to be their son-in-law. Kate Grosmaire didn't initially want to see Conor but eventually felt compelled to speak with him "Before this happened, I loved Conor," she says. "If I defined Conor by that one moment—as a murderer—I was defining my daughter as a murder victim. And I could not allow that to happen." The Grosmaires reached out to restorative justice advocate and facilitator Sujatha Baliga and began the process to understand what happened to their daughter and how Colin could begin to atone.

Conor, the Grosmaires, the McBrides, a victim's advocate, and the state's attorney gathered as part of the pre-plea process. The Grosmaires had Conor answer their most detailed, intimate questions about their daughter's death, and let him know in heart-wrenching depth all that they had lost. Conor had the opportunity to confront what his actions had cost Ann's family, himself, and his family. "The Grosmaires said they didn't forgive Conor for his sake but for their own. 'Everything I feel, I can feel because we forgave Conor,' Kate said. 'Because we could forgive, people can say her name. [W]hen people can't forgive, they're stuck. I don't have to stay stuck in that moment where this awful thing happened. Because if I do, I may never come out of it. Forgiveness for me was self-preservation.'" And yet their forgiveness provided Conor a path to redemption: "With the Grosmaires' forgiveness," he said, "I could accept the responsibility and not be condemned."

"Forgiveness for me was self-preservation."

Based in part on the recommendations of the pre-plea conference, Conor's sentence was shortened to 20 years instead of the death penalty or life in prison. As part of the agreement, he's agreed to learn about teen-dating violence, start Restorative Justice Programs inside his prison, and speak at teen-dating violence events. Because Ann loved animals, he also plans on volunteering at animal shelters after he gets out of prison, as part of Kate's request that he "do the good works of two people because Ann is not here to do hers."

³² Paul Tullis, "Can Forgiveness Play a Role in Criminal Justice?," *The New York Times Magazine* (Jan. 4, 2013), <http://www.nytimes.com/2013/01/06/magazine/can-forgiveness-play-a-role-in-criminal-justice.html>; *Transcript of Awakin Call with Sujatha Baliga, Daily Good* (Jan. 27, 2015), <http://www.dailygood.org/story/950/transcript-of-awakin-call-with-sujatha-baliga-awakin-org>. The Opportunity Agenda's 2015 Communications Institute Fellow sujatha bulaga was closely involved in developing a restorative justice process for this case.

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Creating smart incentives and requiring proper accountability

There are a multitude of perverse incentives that encourage the continuous reliance on incarceration.³³ Current performance measures, for example, often focus on the volume of prosecutions and incarcerations rather than decreases in crime or improvements in community safety.³⁴

In order to promote efficient and effective law enforcement, performance measures should be modified to support evidence-based strategies that promote community safety. New strategies that deliberately incentivize reducing incarceration should be adopted.

To this end, the **Department of Justice** should:

- ▶ Create a Department of Justice Taskforce that would identify criminal justice grants for which smart incentives could be used to promote criminal justice reform and adopt the recommendations of the Taskforce;³⁵ and
- ▶ Encourage law enforcement actors to abandon volume-based metrics in performance evaluations by evaluating officers on levels of diversion to programs that do not require a criminal conviction; reduce racial disparities in civilian contacts and/or low levels of racial disparities; and solicit self-provided reports of instances where they opted to engage in problem-solving to diffuse a situation rather than detain individuals.

In addition, **Congress**, and **state, county**, and **local legislatures** should pass legislation that:

- ▶ Prohibits volume-based performance measures for criminal justice actors;³⁶
- ▶ Provides protection for whistle-blowers to report unofficial volume-based performance

³³ See generally, Inimai Chettiar et al., Brennan Center for Justice, *Reforming Funding to Reduce Mass Incarceration*, (2015) which discusses existing incentives within the criminal justice system that promote high-volume incarceration rates and the need for success-oriented incentives.

³⁴ Ibid. at 30.

³⁵ See Nicole Fortier & Inimai Chettiar, Brennan Center for Justice, *Success-Oriented Funding: Reforming Federal Criminal Justice*, Grants18 (2014).

³⁶ Ibid.

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metrics³⁷ and strict penalties for law enforcement agencies with such unofficial policies;³⁸

- ▶ Creates incentives for law enforcement agencies that are able to reduce undue racial inequities by, for example, evaluating racial disparities in individual officers' contacts with the community, as compared to the community population; and evaluating police officers by the demographic information of those who have filed a complaint against that police officer;³⁹
- ▶ Ensures that predictive policing programs, such as CompStat, are not inadvertently used to unnecessarily increase arrests, and officers are instructed that knowledge of "hot spots" does not provide a basis for searching and/or seizing individuals at the hot spot locations;⁴⁰
- ▶ Promotes diversity among criminal justice system actors by requiring that criminal justice demographic profiles match that of the community within 10 percentage points;⁴¹ and
- ▶ Requires transparency in law enforcement by making data publicly available.⁴² This data should include comprehensive data disaggregated by incident and demographic information at various points in the criminal justice system.

37 There is some evidence that there should be additional protections for whistle-blowers. See J. David Goodman, "Officer Who Disclosed Police Misconduct Settles Suit," *The New York Times* (Sept. 29, 2015), http://www.nytimes.com/2015/09/30/nyregion/officer-who-disclosed-police-misconduct-settles-suit.html?_r=0. This discusses a federal suit that "included allegations of a quota system at the [New York] Police Department, rampant misconduct in the taking of crime reports and a culture of retaliation against whistle-blowers."

38 Ibid.

39 Jessica Eaglin & Danyelle Solomon, Brennan Center for Justice, *Reducing Racial and Ethnic Disparities In Jails: Recommendations for Local Practice* 30-32 (2015).

40 Aaron Cantu, "Algorithms and Future Crimes: Welcome to the Racial Profiling of the Future," *Alternet* (Feb. 28, 2014), <http://www.alternet.org/algorithms-and-future-crimes-welcome-racial-profiling-future>.

41 Ibid. 35-37.

42 See Chettiar et al., *supra* note 33, at 33.

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Ensuring racial equity in the criminal justice system

There is a growing consciousness about how discriminatory criminal justice practices have affected communities of color,⁴³ which in turn affects the perceived legitimacy of the criminal justice system.⁴⁴ The United Nations Human Rights Committee has indicated that the United States “should continue and step up its efforts to robustly address racial disparities in the criminal justice system, including by amending regulations and policies leading to racially disparate impact at the federal, state, and local levels.”⁴⁵

Law enforcement agents are often rewarded for increasing volumes of incarcerated individuals and often racially profile in response to this incarceration incentive.⁴⁶ These perverse incentives encourage racial discrimination in the criminal justice system as police officers target marginalized communities to meet these expectations.⁴⁷

To address this racial inequity, **local, state, and federal legislatures**, and the **local, state and federal executive branches** should:

- ▶ Expressly commit to the elimination of unwarranted racial disparities in the criminal justice system in legislation and/or resolution;⁴⁸

43 See, e.g., Becky Pettit & Bruce Western, “Mass imprisonment and the Life Course: Race and Class Inequality in US Incarceration,” 69 *Am. Sociological Rev.* 151 (2004) (discussing inequality in the imprisonment of men of color); Alexander, *supra* note 17 (arguing that the mass imprisonment of people of color is a new form of Jim Crow); and Loic Wacquant, *From Slavery to Mass Incarceration* (2002) (discussing the use of the carceral state to imprison people of color).

44 See Jill Mizell & Loren Siegel, *An Overview of Public Opinion and Discourse on Criminal Justice Issues* 22 (2014): “A 2014 survey by The Opportunity Agenda found that 69 percent of Americans felt the criminal justice system needed major improvements (50 percent) or a complete redesign (19 percent).”

45 United Nations Human Rights Committee, *Concluding Observations on the Fourth Report of the United States of America* (2014), http://www.ccrjustice.org/sites/default/files/assets/files/HRC_2014_ConcludingObservationsUSGvt.pdf. For additional information about the United States’s compliance with human rights norms, see Center for Constitutional Rights, *UN Working Group of Experts on People of African Descent Fact-Finding Mission to the United States Statement of the Center for Constitutional Rights* (Jan. 2016), http://www.ccrjustice.org/sites/default/files/attach/2016/01/CCR_UNWGEPAD_Submission-20160125.pdf.

46 Ibid.

47 “I-Team: More NYPD Officers Say There’s Proof of Quota-Driven Arrests,” *NBC N.Y.* (April 1, 2016) http://www.nbcnewyork.com/on-air/as-seen-on/I-Team_-More-NYPD-Officers-Say-There_s-Proof-of-Quota-Driven-Arrests_New-York-374227361.html.

48 Sentencing Project, *Reducing Racial Disparity in the Criminal Justice System: A Manual for Practitioners and Policymakers* (2008).

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- ▶ Require racial impact statements prior to the implementation of criminal justice policies and in reviewing the enforcement of existing policies;⁴⁹
- ▶ Mandate regular implicit bias training for all participants in the criminal justice system, including police officers, sheriffs, prosecutors, judges, probation and parole officers, and other criminal justice system officials;⁵⁰
- ▶ Require disaggregated data collection on the race and ethnicity of individuals who come into contact with the criminal justice system;⁵¹ and
- ▶ Incentivize the elimination of racial disparities in the criminal justice system by rewarding law enforcement agencies that successfully reduce racial disparities in their community encounters with additional funding and resources.⁵²

Incorporating restorative justice principles

Restorative justice practices provide a useful alternative to our traditional retributive justice model.⁵³ Traditionally, after a crime, our justice system asks three questions: (1) What law was broken? (2) Who broke it? (3) What punishment is warranted?⁵⁴ This “process of justice deepens societal wounds and conflicts rather than contributing to healing and peace,”⁵⁵ says criminologist Howard Zehr, a pioneer of the modern concept of restorative justice. Restorative justice asks an entirely different set of questions: (1) Who was harmed? (2) What are the needs and responsibilities of all affected? (3) How do all affected parties together address needs and repair harm?

49 “Thorough legislative impact analyses such as legislatively mandated racial impact statements would identify probable disproportionate racial consequences and signal the need to seek alternative problem-solving strategies to eliminate or significantly reduce such effects.” The Sentencing Project, *Reducing Racial Disparity in the Criminal Justice System A Manual for Practitioners and Policymakers* 8 (2008).

50 L. Song Richardson & Phillip Atiba Goff, *Interrogating Racial Violence*, 12 Ohio St. J. Crim. L. 115, 147 (2015) (examining the role of implicit bias on police violence).

51 Racial Disparity Manual, supra note 41.

52 The Opportunity Agenda, *Solutions for Equal Justice and Safety Accountability in Federal Funding to Local Police Departments* (2016).

53 Restorative justice programs have gained attention in recent years, as some communities have begun raising different questions about the costs and impact of crime and how to correct its damage. Restorative justice programs seek to repair the harm caused to victims and communities, while holding individuals responsible for restitution. These programs include practices such as family group conferences, victim-offender mediation, community decision-making, victim impact statements, and mechanisms for restitution. Restorative justice seeks to identify what harm has been caused, how it can be repaired, and who is to be held accountable, while finding a balance among the needs of the victim, the offender, and the community.

54 *What is Restorative Justice?* Restorative Justice for Oakland Youth, <http://rjyoakland.org/restorative-justice> (accessed 7 July 2016).

55 Howard Zehr, *The Little Book Of Restorative Justice* 3 (2002).

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In contrast to the conventional, retributive criminal justice process, restorative justice operates from the premise that committing a crime is not wrong because it breaks a rule, but because it causes harm, and that there is an obligation to understand and repair that harm. In doing so, restorative justice “strives to build a web of relationships”⁵⁶ and the crucial sense of rebuilding justice that the traditional American criminal justice system ignores in its haste to punish the accused.⁵⁷ It has been lauded as a more holistic and rehabilitative approach to criminal justice that empowers victims, addresses the needs of all parties, and holds responsible parties meaningfully accountable for their actions while fostering dialogue and understanding.

There are several models of restorative justice including mediation between the two parties involved in the incident, family or community group conferencing, and peacemaking or sentencing circles.⁵⁸ In all three, the victim, the person who caused harm, and often friends, family, and key supporters of those involved come together to participate in deciding the response to the crime, allowing those who committed the offense to understand the true impact of their actions while also offering them the opportunity to take responsibility for their crimes.

An important function of the conference is to allow both the person who caused harm and the harmed party to get access to social support to prevent recidivism or recover from the violation.⁵⁹ In a sentencing capacity, the victim, the person who caused harm, supporters, and the community, including judges and police, reach a consensus on an acceptable sentence.⁶⁰ In some cases, the group may find it appropriate for the individual who is accused of a crime to participate in community service or a violence prevention program, and show accountability to the victim directly (whether that is through a written apology, financial compensation, or even a mural).⁶¹ In other cases, such as the high-profile case in which the restorative justice processes were used to facilitate sentencing in a voluntary manslaughter case, a defendant may receive a prison sentence within sentencing guidelines, informed by the restorative process.⁶²

Restorative justice has been used to successfully derail the “school-to-prison pipeline”⁶³ in Oakland, where in 2005, the Oakland Unified School District began implementation of a

56 Robert Koehler, “Restorative Justice and the Rebirth of Chicago,” *Huffington Post* (Nov. 13, 2014), http://www.huffingtonpost.com/robert-koehler/restorative-justice-and-t_b_6155952.html.

57 Judy C. Tsui, “Breaking Free of the Prison Paradigm: Integrating Restorative Justice Techniques into Chicago’s Juvenile Justice System,” *J. Crim. L. & Criminology* 636, 638, (2014).

58 *Ibid.*

59 *Ibid.* at 639.

60 *Ibid.* at 640.

61 Amelia M. Wirts, “Tinker Bell or Prison Time? Paradigms of Criminal Law Part One,” *Boston College L. Impact* (Mar. 5, 2015), <http://bclawimpact.org/2015/03/05/tinker-bell-or-prison-time-part-one>.

62 Tullis, *supra* note 32.

63 *See infra*, *Fostering an environment for Respecting Children’s Rights*.

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comprehensive restorative justice system. Four years after implementation, reading levels had doubled, absenteeism had dropped by 24 percent, and graduation rates had risen by 60 percent.⁶⁴ While restorative principles have often been focused on juveniles and less serious offenses, several programs are showing how it can be effective for adults who have committed serious offenses. In Brooklyn, the Vera Institute hosts Common Justice, “the first alternative-to-incarceration and victim service program in the United States that focuses on violent felonies such as assault and robbery, in the adult courts.”⁶⁵ Common Justice’s process includes an intensive violence prevention program.⁶⁶

Restorative justice not only lives up to our ideals, it can be considerably more effective at creating safe communities in an efficient way. Restorative justice programs have been shown to reduce recidivism and have higher victim satisfaction rates than traditional criminal justice approaches.⁶⁷

Studies show that individuals in restorative justice programs were more likely to complete their programs and less likely to reoffend; these programs were associated with reduced recidivism for both adults and youth; and participants had higher perceptions of fairness of these programs.⁶⁸ Center for Restorative Youth in Flathead County, MT, decreased the county’s youth recidivism rate to 13 percent compared to the state’s rate of 46 percent overall. “The numerical improvement is encouraging, but the folks . . . in Flathead County agree that the most important ‘measurements’ are the new relationships that are created: the strengthened community and the previously nonexistent bonds that were formed.”⁶⁹

Moreover, it is an economically sound approach to criminal justice matters, especially considering the alternative. “A recent Pew Research study estimated that increased incarceration accounted for less than a third of the drop in crime in the United States since 1990. Yet states currently spend approximately \$51 billion per year on corrections. With a national recidivism rate of approximately 50 percent, it is clear that incarceration is a highly expensive yet highly ineffective means of handling crime.”⁷⁰ To benefit from restorative justice

64 Data in Action, LLC, *Restorative Justice in Oakland School: Implementation and Impacts*, OUSD 4 (Sept. 2014), <http://www.ousd.org/cms/lib07/CA01001176/Centricity/Domain/134/OUSD-RJ%20Report%20revised%20Final.pdf>.

65 *Common Justice*, Vera Institute, <http://www.vera.org/project/common-justice> (accessed 10 June 2016).

66 Ibid.

67 Adler School Institute on Public Safety and Social Justice and the Illinois Coalition for Immigrant and Refugee Rights, *Restorative Justice: A Primer and Exploration of Practice Across Two North American Cities* 4 (2012).

68 Ibid. at 10-11.

69 Maya Schenwar, *Locked Down, Locked Out: Why Prison Doesn't Work and How We Can Do Better* (Barrett Koehler 2014).

70 Ibid. at 9. See also Bruce Western & Becky Pettit, *Collateral Costs: Incarceration's Effect on Economic Mobility*, Pew Charitable Trusts (2010) (“[W]hile expanded incarceration contributed to the drop in violent crime in the United States during the 1990s, research shows that having more prisoners accounted for only about 25 percent of the reduction . . .”).

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practices, the federal and state governments should provide funding and other incentives to support locally-implemented restorative justice programs.

Local governments and the judiciary should establish restorative justice programs that address community justice matters.

School administrations should adopt comprehensive restorative justice models within their schools for school disciplinary matters.

Creating spaces for community healing

Healing and rebuilding communities that have been weakened by mass incarceration should be at the forefront of criminal justice reform. It is important to recognize that low-income communities of color have been disparately affected by mass incarceration; and there must be spaces that allow these communities to heal from the injuries that they have suffered. Affirmatively addressing community healing and rebuilding promotes an environment where recently released individuals can focus on reintegration rather than being funneled into dysfunctional spaces that foster resentment toward law enforcement officials. Strong communities ultimately promote overall safety.

Moreover, explicitly acknowledging past injustices is often the first step toward avoiding their repetition. Depending on the needs of the particular community, local commissions designed to promote truth and/or reconciliation may provide a forum for communal healing and a space for untold stories to be voiced.⁷¹ These commissions should be viewed as a first step toward repairing strained relationships between communities and law enforcement agencies. They should assist in building community trust and acknowledging the community's role in promoting overall safety.

The **Department of Justice (DOJ)** should create incentives that promote healthy relationships between the community and law enforcement agencies by:

⁷¹ See generally Fania E. Davis et al., *Restoring Racial Justice*, 2015, <http://internal.psychology.illinois.edu/~lyubansk/RRJ.pdf>.

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- ▶ Prioritize law enforcement agencies that have a community forum strategy and/or other substantive community outreach strategy in all funding decisions, particularly for funding related to the Community Oriented Policing Services Program;⁷²
- ▶ Require that law enforcement agencies specify their plans for community cooperation and community forums in all funding applications;⁷³ and
- ▶ Establish mechanisms for withholding funds from law enforcement agencies that exhibit a failure to maintain positive community relations.⁷⁴

The **DOJ Community Relations Service**, which “works with all parties, including State and local units of government, private and public organizations, civil rights groups, and local community leaders, to uncover the underlying interests of all of those involved in the conflict and facilitates the development of viable, mutual understandings and solutions to the community’s challenges,”⁷⁵ should identify communities that require mediation and other restorative services stemming from discriminatory practices and act as a community resource.

Local and state legislatures should pass legislation that supports the:

- ▶ Creation of commissions for truth and/or reconciliation, where there is a history of past abuse and/or community mistrust of law enforcement. These commissions should be tasked with making recommendations based on their findings;⁷⁶
- ▶ Creation of “Monuments, memorials and markers should be erected to facilitate this important public dialogue. Education must be accompanied by acts of reconciliation, which are needed to overcome acts of racial bigotry and legacies of injustice”;⁷⁷ and

72 The Opportunity Agenda, *Solutions for Equal Justice and Safety Accountability in Federal Funding to Local Police Departments* (2016).

73 Ibid.

74 Ibid.

75 Ibid.

76 See Davis, et al., *supra* note 71.

77 Statement to the Media by the United Nations’ Working Group of Experts on People of African Descent, on the Conclusion of its Official Visit to USA, 19–29 January 2016, <http://ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17000&LangID=E#sthash.5HumIkWe.dpuf>.

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- ▶ Development of community forums that create a space for communities and law enforcement to foster a cooperative relationship.⁷⁸

Local police departments and police chiefs should promote community cooperation and collaboration by taking the following actions:

- ▶ Coordinate monthly community forums intended to promote understanding and ease tensions, where rank and file police officers interact with community members and local activists, and facilitate policing practices consistent with community values. The discussions and outcomes from these forums should be dispersed to all police department members and incorporated into internal police department meetings;
- ▶ Educate police recruits and other police officers about the role that positive community relations play in maintaining police legitimacy and officer safety;⁷⁹
- ▶ Recruit police officers from within the communities that the police serve; and
- ▶ Where appropriate, issue a formal apology to the community for past misconduct.⁸⁰



For additional background on the issue of mass incarceration, the importance of a comprehensive commitment to ending the phenomenon, and alternatives, such as restorative justice, check out:

Michelle Alexander's 2010 book, *The New Jim Crow*, which describes the ascension of mass incarceration as a contemporary system of racial control;

Robynn J.A. Cox's 2015 report *Where Do We Go from Here? Mass Incarceration and the Struggle for Civil Rights*, which describes the rise of mass incarceration and highlights policy solutions;

78 See, e.g., Black Community Crusade for Children & PolicyLink, *A Protest to Proposal: A Police-Community Relations Forum* (June 26, 2001), <http://www.policylink.org/sites/default/files/Report.FromProtesttoProposal-CincinnatiPolice-CommunityForum.pdf> (summarizing the proceedings of a community forum intended to improve the relationship between the community and the Cincinnati Police Department).

79 Weber has described the state as "a human community that (successfully) claims the monopoly of the legitimate use of physical force within a given territory." Max Weber, from *Max Weber: Essays in Sociology* 78 (1946).

80 *Final Report of the President's Task Force on 21st Century Policing* 85 (May 2015).

TRANSFORMING THE SYSTEM

The Obama Administration's *President's Memorandum on the Economic Costs of Mass Incarceration*, which acknowledges the importance of "holistic" criminal justice transformation;

The Center for Constitutional Rights (CCR), which is "dedicated to advancing and protecting the rights guaranteed by the U.S. Constitution and the Universal Declaration of Human Rights" and has issued several calls to ensure that the criminal justice system is aligned with human rights norms, including its *Submission to the UN Working Group of Experts on People of African Descent*. (Our former Communications Institute Fellow, Vince Warren, is the Executive Director of CCR.)

Kimberle Williams Crenshaw and Andrea J. Ritchie's report, *Say Her Name: Resisting Police Brutality Against Black Women*, which highlights the importance of intersectionality in criminal justice reform and a racial justice movement;

The **Movement for Black Lives** has outlined a comprehensive policy platform for upholding black dignity and black humanity.

The American Civil Liberties Union and Sentencing Project report, *Ending Mass Incarceration: Charting a New Justice Reinvestment*;

Howard Zehr, the grandfather of the restorative justice movement, who outlines its principles and practice in *The Little Book of Restorative Justice*; and

Impact Justice, an innovation and research center committed to "fostering a more humane, responsive, and restorative system of justice in our nation" that creates resources and provides training to implement restorative justice.