

NFHS Topic Proposal: Criminal Justice Reform

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Top Level

Rationale for the Topic

It doesn't matter if you are a policy, LD, or PF debater, a coach, or a layperson with no affiliation to debate; when the topic of criminal justice is broached everyone has something to say. I have been in barbershops where people discussed problems with laws, judges, police officers, prison conditions and the death penalty. The problem with these public discussions is that often times those engaged are armed with improper information and misnomers. Having this topic as a policy topic would help clear up some misinformation and would help turn our students into advocates for a better, more equal America.

As a community, we have debated the topic of criminal justice reform in the past. In 96-97 we debated ways to reduce juvenile crime in the United States, in 89-90 we debated which policy we should adopt to reduce overcrowding in prisons and jails, and in 83-84 we debated standardizing procedures for criminal courts in the United States.

That being said, it has been well over twenty years since we, as a community, have interrogated ways in which we can improve the quality and effectiveness of the Criminal Justice System. Over the last 10-15 years there has been an enlightenment of society when it comes to the problems associated with the Criminal Justice System. With the waves of unarmed African-Americans being shot by police officers, individuals dying in police custody without warranted explanations, and those questioning how unfair the prison system is when it comes to gender identities and their incarceration. These topics and others serve as gateways into a topic that can not only inform our students but also shift their mindset towards the system as a whole and galvanize some type of social change.

Some critics of this paper have argued that it may focus too much on "one group of people." If you think this is the case I would like for you to ask yourself WHY you feel that only certain groups of individuals are constantly criminalized and what social location you speak from that allows you to focus on a privileged stance.

Some would argue that debates could possibly devolve into "Blue Lives Matter" versus "Black Lives Matter" that would only increase the politicization of such topics in social settings. Depending on the wording this COULD be a possibility but I have two responses to this. First, those dedicated officers chose the life of becoming police officers. While they are essential to the operation of "civil society" that are allowed the ability to take off the badge when not on duty. Communities of color aren't afforded said luxury. They are born into a skin that cannot be shed; if we are worried about debates revolving around these issues then the problem isn't with the topic but those interacting with it. Secondly, the worry about the over politicization of the topic on the heels of debating immigration during the height of the Trump Presidency is laughable. Students were able to debate immigration without allowing the constant political discussion surrounding the issue to taint resolution's debatability. We should bear in mind our students tend to be more open-minded and tolerable than their

coaches. We should not deprive them of a good topic just because we are afraid of what it might teach us about the US criminal justice system and ourselves.

Overview of the “First Step Act”

Some would argue that the passage of the FIRST STEP (Formerly Incarcerated Reenter Society Transformed Safely Transitioning Every Person) Act was the one true act of bipartisanship shown by Congress in 2018. This Act was passed with the a push from liberals like Rep. Hakeem Jeffries and Sen. Dick Durbin as well as conservatives like Rep. Doug Collins and Sen. Chuck Grassley; included in the discussion of the bill were formerly incarcerated people, celebrities, corporate executives, pastors and grassroots leaders.

The Act had a number of provisions that allowed for relief from outdated sentencing guidelines, reformed the sentencing of some federal laws and allowed those 60 years of age or older suffering from “extraordinary and compelling circumstances” to petition for release. Before its passage, it had been well over a decade before reform happened to the criminal justice system.

One of the authors of the Act, Van Jones, concedes that it was named the FIRST STEP Act because there is “much more to be done” in terms of reforming the Criminal Justice System. For this reason, Criminal Justice Reform would make an ideal topic for high school students to debate.

Federal Role in CJR

Past papers, and previous reviewers of this paper, have cited that the federal government plays a small role in the day-to-day workings of the criminal justice system. While this is common thought, it isn’t necessarily correct. While the federal government has left a lot up to the states, that doesn’t mean they are hands off on the issue. Right now there are billions of dollars allocated for programs that flies on autopilot and ends up funding overpolicing and increased incarceration. Affirmatives could allocate funding for programs that reduce overpolicing and incarceration rates.

Fortier, 14 [Nicole Fortier is Counsel and Senior Manager in the Justice Program at the Brennan Center for Justice at NYU School of Law. The Brennan Center’s Justice Program seeks to ensure a rational, efficient, effective, and fair criminal justice system. Ms. Fortier works to reduce mass incarceration by conducting extensive research on systemic funding structures and criminal justice policies, coordinating policing and prosecuting support for reform, engaging in federal and state advocacy, supervising NYU School of Law clinic students and legal interns, and co-authoring policy proposals on how to improve the criminal justice system. She holds a J.D. from Fordham University School of Law. “How the Federal Government Can Reshape Law Enforcement,” 8 December 2014, <https://www.brennancenter.org/blog/how-federal-government-can-reshape-law-enforcement>]

For decades, the federal government has provided equipment to police worth billions of dollars. Concerns about those programs were raised after police in Ferguson wore riot gear and carried military-grade weapons at protests. Obama has mandated a review of federal programs that provide that assistance to give them better coordination, oversight and community engagement. But the review, while valuable, leaves out much of the \$4 billion the federal government sends to law enforcement annually, often with no clear goals for how those resources should be used. Consequently, **the funds flow on autopilot, and end up promoting overpolicing and overincarceration.** For example, the Byrne JAG program evaluates recipients on the number of kilos of cocaine seized, but not on how much drug crime dropped, leading to overemphasis on seizures over programs with proven records of reducing drug crime rates. A Brennan Center report proposed a way to modernize the programs: Tie federal dollars to reducing both crime and incarceration, and give police flexibility to choose the best practices in their jurisdictions. Proven crime-reduction programs, including mental health and drug treatment, and community policing, are the path to 21st century policing. The federal government plays a powerful

role in law enforcement policy. Many grants pay for important programs that help control crime, and it's vital that taxpayer money support our police smartly, not blindly.

After he completed his second term in office President Obama wrote in the Harvard Law Review an article titled “The president's role in advancing criminal justice reform” (Harvard Law Review 130.3 Jan. 2017). While I appreciate the commentary of others, I will defer to a man who served eight years in office about how the federal government, through the executive branch, can reform the criminal justice system. He outlines areas that need immediate attention; types of bipartisan bills that could be passed in Congress, in addition to ways federal programs can be promoted and implemented on a state level. A lot of the areas discussed in the article are also discussed in this paper.

In 1994 Congress passed the “Violent Crime Control and Law Enforcement Act.” This single piece of legislation did a number of things including: (1) banning assault rifles federally (sunset provision was lifted and not renewed in 2004), (2) established 60 new death penalty offenses under 41 federal statutes, (3) eliminated higher education for inmates, (4) allocated money to fund the enforcement of the Violence Against Women Act, (5) initiated “boot camps” for delinquent minors, and (6) established a national sex offender registry. Most, if not all, of the “Violent Crime Control and Law Enforcement Act” was completely new and over reaching by the federal government. That didn't stop politicians from voting for it, the executive from signing it, and the courts from upholding it. Even if it's true the federal government doesn't operate the criminal justice system regularly, past actions have shown us they are not afraid to take action where they see fit; neither should we be afraid.

The Criminal Justice System

Police

Most of America looks to their local police departments to protect them from crime and to keep their communities safe. People in communities of color, like myself, find ourselves having a rocky, unstable relationship with police officers. On one hand we know they are important to the operation of society but on the other hand when we see police officers act with impunity, with respect to misconduct, that shapes our views of police, as a whole. There is evidence to suggest that police misconduct is on the rise in the US. Shaun King (2018) explains how police misconduct is on the rise and how Trump, along with the Supreme Court, have made it easier for police misconduct to go unpunished:

King, 18 [Jeffery Shaun King is an American writer, civil rights activist, and co-founder of Real Justice PAC and The North Star. King is known for his use of social media to promote social justice causes, including the Black Lives Matter movement. King was raised in Kentucky and attended Morehouse College in Atlanta, Georgia. “Data Shows Police Brutality in America is Getting Worse — 2018 Could Be the Most Deadly in Years,” 17 April 2018, <https://theappeal.org/data-shows-police-brutality-in-america-is-getting-worse-2018-could-be-the-most-deadly-in-years-90c9fa503580/>]

“**Police brutality in the United States is not worse. Phones and social media just make it feel that way.**” I see and hear some version of that thought pretty much every single day. **It's a lie. It sounds good.** I wish that was what we were dealing with right now. But it's not. See, some things are hard to measure. Racism itself is difficult to measure. We can measure hate crimes — which are absolutely an indicator. We can measure reports of

discrimination. We can measure the number of times hateful words are being used across the internet. Those things all help us measure racism, but it can sometimes be nebulous. Some of the most destructive forms of racism—like being denied a home loan or being passed on for a job where you are the most qualified candidate—are hard to measure in real time. Police brutality is not that. We can measure it. We can track it. In fact, every single day of the week, I study every single case of every single person who was killed by police. Each case is unique. I know they seem to all blend and blur together sometimes, but each victim, each story, each city, each cop, each police department, each circumstance is unique. But the one thing I can measure with absolute certainty is whether or not the number of people killed by police in this country is rising or falling. That's not esoteric. It's not theoretical. And when people say things like, "Police brutality is not getting worse, social media and cell phones just show it more," I know why they think that. Social media and cell phones have indeed taken what was the secretly lived reality for people in this country—it's taken that horrible reality and made it mainstream. Truthfully, until 2014, when police killed Eric Garner and Mike Brown and John Crawford and Tamir Rice, most stories of police brutality lived in the shadows. Most of us would struggle to name a single person killed by police in 2011 or 2012 or 2013. So yes, it's true, cell phone cameras and social media make police brutality more known, but I am here to report to you the painful fact that the problem is actually getting worse. According to Killed by Police, a website that has painstakingly tracked police killings since 2013, there have been more police killings thus far this year than in the same timespan in any of the last five years. That means the problem is getting worse. It doesn't just feel worse. It's not just the cameras and the hashtags. It's actually getting worse. And it's important for us to acknowledge this reality because I think it actually feels like it's getting worse. That horrible feeling is backed up by measurable facts. On the heels of the racist murders of Trayvon Martin and Jordan Davis, we entered 2014 with our nerves already frayed about what was going on in this country. When police in New York, Ohio, and Ferguson then killed Eric Garner, John Crawford, and Mike Brown—three unarmed black men—in a span of three weeks in the summer of 2014, a movement was sparked. And so it may feel like 2014 was the worst year for police brutality because in that year we became activated to how serious the problem was and we learned more of the names and stories. But this year, despite all our activism around police violence, is likely to be worse. By April 15 of 2014, at least 293 people had been killed by American police. By the end of the year, the number totaled 1,114. By April 15 of 2015, the number had increased to 350 people killed by police. By the end of the year, the number rose by a staggering 108 fatalities over the year before to 1,222 people killed by American police. By April 15 of 2016, the number declined slightly to 348 people. By the end of the year 1,171 people had been killed by police—a drop of 51 people. Now, we have to remember, those may just be numbers for us, but many of us celebrated when we saw that drop because those are 51 lives—51 mothers and fathers, sons and daughters, who are still alive. By April 15 of 2017, the first year of the Trump administration, with 346 people killed by police, it looked like the numbers were going to stay steady. But by the end of the year, with 1,194 people killed, there was an increase of 23 people over 2016. And this year is worse. We're up to 378 people killed by April 15, the highest yet. If this trend continues, this could be the first year tracked by the site where we have 1,300 people killed by police in the United States. It was my long-held belief that police brutality would increase under the Trump administration. While nearly all policing decisions are made at the state or county level, Trump has already signaled to police that he is in their corner and has made remarks suggesting that he didn't really mind a little police brutality here and there. The Department of Justice meanwhile made clear last year that it wouldn't be spending its resources to hold corrupt police departments accountable when it ended a DOJ program that scrutinized them. Now a recent decision from the conservative-majority Supreme Court has doubled down on protections for police who use force even in situations where it was not called for.

Some would argue that the officers that tarnish the badge are dealt with and punished accordingly. The problem with this mode of thinking is that most investigations are handled by the police department the officer works for. In fact, most instances of police misconduct go unpunished. German Lopez (2018) and John Kelly & Mark Nichols explain how this plays out:

Lopez, 18 [German Lopez is a senior correspondent for Vox. They have written for Vox since it launched in 2014, with a focus on criminal justice, guns, and drugs. Previously, they worked at CityBeat, a local newspaper in Cincinnati, covering politics and policy at the local and state level. "Cops are almost never prosecuted and convicted for use of force," 14 November 2018, <https://www.vox.com/identities/2016/8/13/17938234/police-shootings-killings-prosecutions-court>]

Police are very rarely prosecuted for shootings — and not just because the law allows them wide latitude to use force on the job. Sometimes **the investigations fall onto the same police department the officer is from**, which creates major conflicts of interest. **Other times the only available evidence comes from eyewitnesses**, who may not be as trustworthy in the public eye as a police officer. **“There is a tendency to believe an officer over a civilian, in terms of credibility,”** David Rudovsky, a civil rights lawyer who co-wrote *Prosecuting Misconduct: Law and Litigation*, told Vox’s Amanda Taub. **“And when an officer is on trial, reasonable doubt has a lot of bite.”** A prosecutor needs a very strong case before a jury will say that somebody we generally trust to protect us has so seriously crossed the line as to be subject to a conviction. **“If police are charged, they’re rarely convicted.”** The National Police Misconduct Reporting Project analyzed 3,238 criminal cases against police officers from April 2009 through December 2010. They found that **only 33 percent were convicted, and 36 percent of officers who were convicted ended up serving prison sentences.** Both of those are about half the rate at which members of the public are convicted or incarcerated. The **low conviction and incarceration rates have fed into the idea** among critics of law enforcement that **police can get away with using deadly force even in situations that don’t call for it.** This poses concerns for those who want to hold police accountable, but critics also worry **it has fostered a police culture that’s too lenient in using force because cops believe there most likely won’t be legal consequences even if they make a bad call.**

Kelly & Nichols, 19 [John Kelly is an investigative journalist leading data-driven reporting and analysis for USA TODAY Network Investigations. I’ve been a watchdog journalist for more than 25 years of reporting and editing for The Associated Press, Florida Today and USA TODAY. Mark Nichols has been a data journalist since January 2016 with USA TODAY’s national investigations team, part of the USA TODAY Network. I’m also an avid jazz and gospel musician, playing electric bass and double bass. “We found 85,000 cops who’ve been investigated for misconduct. Now you can read their records.” 24 April 2019, <https://www.usatoday.com/in-depth/news/investigations/2019/04/24/usa-today-revealing-misconduct-records-police-cops/3223984002/>]

At least 85,000 law enforcement officers across the USA **have been investigated or disciplined for misconduct over the past decade**, an investigation by USA TODAY Network found. **Officers have beaten members of the public, planted evidence and used their badges to harass women.** They have **lied, stolen, dealt drugs, driven drunk and abused their spouses.** Despite their role as public servants, **the men and women who swear an oath to keep communities safe can generally avoid public scrutiny for their misdeeds.** **The records of their misconduct are filed away**, rarely seen by anyone outside their departments. **Police unions and their political allies have worked to put special protections in place ensuring some records are shielded from public view, or even destroyed.**

A lot of this police misconduct affects minorities at a higher rate than their white counterparts. Most of the data that is collected on the subject are done by news outlets like the Guardian and by advocacy groups like the National Police Accountability Project; often times that the police department in question deletes data. Maggie Fox (2018) breaks down the numbers for us:

Fox, 18 [Maggie Fox is a science and health writer for NBC News, “Police killings hit people of color hardest, study finds,” 7 May 2018, <https://www.nbcnews.com/health/health-news/police-killings-hit-people-color-hardest-study-finds-n872086>]

Police killings are cutting short the lives of more people of color, researchers reported Monday. While just over half of people killed by police are white, Hispanics and African-Americans are on average younger, the researchers found. And **people of black, Hispanic and Native American background are disproportionately killed by police**, they reported. “Police violence disproportionately impacts young people, and **the young people affected are disproportionately people of color.**” Anthony Bui of the David Geffen School of Medicine at the University of California, Los Angeles and colleagues wrote. They took a new approach to tallying the effects of police shootings and killings, calculating years of life lost. It’s a standard public health calculation, used to estimate the impact of diseases and injuries, they wrote in their report, published in the *Journal of Epidemiology*

& Community Health. “Years of life lost (YLLs) are the difference between an individual’s age at death and their corresponding standard life expectancy at age of death,” they wrote. “YLLs highlight that police violence disproportionately impacts young people, and the young people affected are disproportionately people of color,” they added. **“Framing police violence as an important cause of deaths among young adults provides another valuable lens to motivate prevention efforts.”** **“There are no comprehensive public databases on police shootings,”** so Bui and colleagues used “The Counted”, a report compiled by The Guardian based on media reports of police killings. “Data from ‘The Counted’ have been validated as a source for the number of deaths due to police violence in the USA and found to be more complete than the National Vital Statistics System,” they wrote. **“The database showed 1,146 police killings in 2015 and 1,092 in 2016.”** Bui and colleagues checked the ages of those killed and used U.S. Census and other data to calculate how long they would have been expected to live had they not been killed. **“People of color comprised 38.5 percent of the population, but 51.5 percent of all years of life lost in 2015–2016.”** they wrote. **“Years of life lost from police violence were greatest among younger age groups across racial and ethnic groups,”** but the distribution of YLLs was higher among even younger ages in people of color compared with whites. **“The highest proportion of those killed was among Native Americans, who were killed by police at a rate of 7.8 per one million people,”** the researchers found. **“African-Americans died at the hands of police at a rate of 7.2 per million, while whites are killed at a rate of 2.9 per million.”**

One of the more common mechanisms that is talked about to combat police misconduct is the implementation of body cameras on officers. This practice has been instituted in some jurisdictions across the country with levels of success. Shira Scheindlin (2015), who is a senior district judge for the Southern District of New York, talks about the reasons why body cameras decrease police misconduct:

Scheindlin, 15 [Shira A. Scheindlin is a senior United States district judge for the Southern District of New York. “Will the widespread use of body cameras improve police accountability? Yes,” Spring 2015, <https://www.americasquarterly.org/content/yes-people-behave-differently-when-theyre-being-watched>]

The point should be clear: **“people behave differently when they know they are being watched, and police are no exception. Officers wearing body cameras will be less aggressive and more respectful”** when they interact with members of the community. **“They will also be more reluctant to use force unless it is necessary to protect themselves and the public.”** While **“body-worn police cameras”** may not be a panacea, they will not only lead to a reduction in the use of unnecessary or excessive force by police officers, but **“will also be beneficial for both the police and the community.”** Evidence supporting this belief comes from jurisdictions in which experiments with the use of body-worn cameras have produced encouraging data. **“In one such jurisdiction—Rialto, California—after the police force had worn body cameras for a full year, citizen complaints against police declined by 60 percent.”** Other jurisdictions that have implemented body cameras have seen similar results. **“In Mesa, Arizona, for example, use-of-force complaints decreased by 75 percent”** for officers using cameras in a pilot program.¹ In Nampa, Idaho, they dropped by 24 percent.² **“Another important statistic from the Rialto study is the number of incidents that resulted in the use of force by an officer, which dropped by 88 percent”** after the use of body cameras. **“Officers who were not equipped with cameras were twice as likely to use force”** as officers who were. Even more tellingly, **“when officers wore cameras, every incident of physical contact was initiated by a member of the public, but in the absence of cameras, 29 percent of the incidents involving physical force were initiated by the officer.”**³ Such studies have taken on increased significance in the wake of controversy over the deaths of several African Americans at the hands of police over the past year. This includes Michael Brown, an unarmed teenager who was shot by an officer in Ferguson, Missouri, and Eric Garner in Staten Island, New York, who died after being placed in a chokehold by a police officer. President Barack Obama and Attorney General Eric Holder have called for greater use of body-worn cameras by police officers. But even before these incidents, I concluded that **“such cameras could play a role in curtailing abuses of the long-standing police practice in New York of stopping and frisking young men—most of them African American—on suspicion of criminal behavior.”** As part of my August 2013 ruling in *Floyd v.*

City of New York that the disproportional use of stop and frisk constituted a pattern of racial profiling and violated the U.S. Constitution, I ordered the New York City Police Department to conduct a trial in selected precincts requiring officers to wear body cameras. **The use of body cameras will also protect police officers. No longer will a person be able to claim that a police officer punched or kicked him without cause, when in fact it was that person who initiated the encounter by threatening or attacking the police officer.** The contemporaneous record of what occurred should make it clear whether the officer was justified in using force. Everyone has a right to act in self defense. **A video presents an unbiased account of the events.** It has no motive to lie and no stake in the outcome. It merely records the event as it happens. If a police officer acts lawfully, then he should not be wrongly accused, forced to defend himself and risk a punishment he does not deserve. The camera will provide his defense.

Lawyers and the Courts

One of the most used methods to obtain convictions, by prosecutors, is the usage of plea bargains. Often times prosecutors will overcharge defendants and use the threat of revocation of bail as a tool to force people to agree to plea deals that aren't always in their best interest; some would argue that the plea bargain stage is the most important time in a defendant's course through the criminal justice system. Christopher Durocher (2018) explains how plea bargains have a racial component of them:

Durocher 18 (Christopher Wright Durocher joined ACS in 2014 and currently serves Senior Director of Policy and Program. He oversees the development of policy related to a wide range of criminal justice and access to justice issues. He works directly with scholars and experts to develop issue briefs and blog posts, manages and directs relationships with various coalition partners, represents the organization in coalition meetings, and develops and implements national programming related to the criminal justice and access to justice portfolios. 4-4-2018, "The Rise of Plea Bargains and Fall of the Right to Trial," American Constitution Society, <https://www.acslaw.org/acsblog/the-rise-of-plea-bargains-and-fall-of-the-right-to-trial/>)

On March 8, the American Constitution Society and the National Bar Association presented "The Rise of Plea Bargains and Decline of the Right to Trial," featuring a panel of experts who have worked in the trenches of our criminal justice system as prosecutors, public defenders, advocates, and researchers. The panel tackled the **thorny issues that arise when plea bargains become an indispensable part of our criminal justice systems—systems** that are now far too large to efficiently allow every criminally accused individual to exercise their right to a jury trial. Six years ago, in his opinion for the majority in *Missouri v. Frye*, Supreme Court Justice Anthony Kennedy observed that "[i]n **today's criminal justice system the negotiation of a plea bargain, rather than the unfolding of a trial, is almost always the critical point for a defendant.**" and, in fact declared that plea bargaining "is not some adjunct to the criminal justice system; it is the criminal justice system." Today, more than 95 percent of cases that resolve in a conviction are the result of plea bargains. As panelist Jenny Roberts, co-director of the Criminal Justice Clinic at American University Washington College of Law, explained, a number of factors have led to the ubiquity of plea bargains in the criminal justice system. **Bail**, she asserts, **is the single biggest factor in guilty pleas** in misdemeanor cases. Melba Pearson, a former state prosecutor in Miami-Dade County, agreed, explaining, "If you are in jail because of a cash bail you can't pay, **pleas can sound like a great alternative to losing your job, failing to pay rent,** and a variety of other negative consequences." Additionally, Roberts cited **the power of prosecutors to overcharge and leverage draconian sentencing laws to make the risk of going to trial seem too great for many defendants.** Combined with the sheer volume of criminal case, and misdemeanor cases in particular, which make it impractical if not impossible to try all criminal cases, and the rise of plea bargains was inevitable. She was quick to point out, however, that "the system is too large by design," and that we can control the size and severity of our criminal justice system. If the political will existed, we could address overcriminalization and mandatory minimums, and thereby substantially scale back the size of our system. **The pervasiveness of plea bargains brings with it many troubling consequences.** Avis Buchanan, director of the Public Defender Service for the District of Columbia, noted "When you accept an early plea, you lose the chance to understand the evidence more completely. You might get a "favorable" bargain relative to what you think the charge could be, but can't factor in what exculpatory evidence might be available." The panel agreed that this can, and often does, **lead to defendants pleading guilty to crimes for which they are not culpable** or accepting lengthier sentences than they otherwise

would have received. As with so many other features of the criminal justice system, **plea bargains also have a disparate impact on people of color.** A recent study revealed that **prosecutors were more likely to offer charge reductions to white defendants than black defendants.** According to the study's findings, black defendants with no prior convictions were twenty-five percent less likely than white defendants with no prior conviction to have the initial charges dropped or reduced to a lesser crime. Those **white defendants** who face initial felony charges **were**, therefore, **less likely than black defendants to be convicted of a felony**, and, in misdemeanor case, **more likely to be convicted for crimes carrying no prison sentence or not being convicted at all.** Buchanan noted that **even defense counsel can bring biases that exacerbate racial disparities in outcomes.** In the end, the panelists **offered a range of ways to address the problem with plea bargaining, including changing the culture in prosecutor offices, reforming our bail systems, and removing the points of coercion that make it impossible for many defendants to make thoughtful, voluntary decisions about their cases.** Regardless of the reforms undertaken, the panelists all agreed that plea bargaining will continue to play a large role in our system.

While some may not agree on how to reform the system of plea-bargaining, there is no denying its negative effects. Plea-bargaining can be coercive towards innocent people, often times forcing a guilty plea, and be a sight-for-sore-eyes for an overworked defense attorney. David Lat (2018) explains:

Lat, 18 (David Lat is editor at large and founding editor of Above the Law, as well as the author of *Supreme Ambitions: A Novel*. He previously worked as a federal prosecutor in Newark, New Jersey; a litigation associate at Wachtell, Lipton, Rosen & Katz; and a law clerk to Judge Diarmuid F. O'Scannlain of the U.S. Court of Appeals for the Ninth Circuit 11-20-2018, "Plea Bargaining: A Necessary Evil?," Above the Law, <https://abovethelaw.com/2018/11/plea-bargaining-a-necessary-evil/>)

Brower's response: it's the *right* to a jury trial that's so important and constitutionally protected — and this right belongs to the defendant, which she can waive by pleading guilty. Some plea bargains are unfair, but a fair plea agreement is constitutionally sound (and a variety of safeguards exist within the system to promote fairness). Unfortunately, according to Clark Neily, **many plea bargains are deeply unfair — which is why innocent people routinely plead guilty to crimes they did not commit. He cited three factors that make the plea-bargaining process so coercive: (1) pretrial detention,** which is often hellish (think of Rikers Island), and which defendants will do practically anything to escape; **(2) woefully inadequate and/or under-resourced defense counsel** (and/or conflicted defense counsel, to the extent that they have to maintain good relations with prosecutors for future cases); and **(3) the "trial penalty," which is the (often vast) difference between your sentence if you plead and your sentence if you dare to go to trial.** Professor Carissa Hessick echoed many of Neily's concerns. On the issue of pretrial detention, she quoted one public defender who told her that he has never been able to convince a client to reject a plea deal if the deal allowed for immediate release. Speaking more broadly, **the idea of plea bargaining rests upon concepts of negotiation and contract that assume rational actors — but some (perhaps many) defendants act irrationally, calling into question the legitimacy of the model.** Notwithstanding her criticisms of plea bargaining, Professor Hessick parted ways with Clark Neily on what is to be done. "Plea bargaining is bad," she noted, "but other things are also very bad." The practice simply can't be abolished. Given its importance to the criminal justice system, **plea bargaining** isn't going away anytime soon. But it can and **should be reformed,** according to Judge Stephanos Bibas (3d Cir.). A professor at Penn Law before joining the Third Circuit, Steve Bibas has written extensively about how to improve plea bargaining. Under the current system, he said, **prosecutors wield far too much power;** we need checks and balances to provide greater balance. **Possible solutions could involve judges getting more involved in the plea-bargain process** (as Judge Jed Rakoff has argued) **or "plea juries" deciding on the acceptability of plea and sentence** (as Laura Appleman has proposed). The panelists disagreed with each

other on a number of issues, but by the end of the discussion, one thing was clear: **the status quo is unacceptable. The fact that it's rational for some innocent people to plead guilty is**, as Judge Bibas put it, "the canary in the coal mine" — **a sign that something is seriously wrong with current practice**, and a sign that something must be done.

Another topic that has come under fire in the Criminal Justice System is the notion of mandatory minimum sentencing. Mandatory minimum sentencing is in reference to laws that require judges to sentence people for a predetermined amount of time, usually for serious and violent offenses. There is a group of legal scholars that would argue mandatory minimums take away judge discretion when punishing those convicted of crimes. Tim Peeler (2018) explains:

Peeler, 18 [Travis currently provides direct legal assistance to people with disabilities whose rights are threatened or violated; protects the rights of individuals and groups of people with disabilities through the courts and justice system; educates and informs policy makers about issues that impact the rights and services for people with disabilities; and informs people with disabilities and family members about their rights. Peeler, Travis. "Problems with Mandatory Minimum Sentencing." *LegalMatch Law Library*, Legal Match, 27 June 2018, www.legalmatch.com/law-library/article/problems-with-mandatory-minimum-sentencing.html.]

Mandatory minimum sentencing laws are laws which force a judge to hand down a minimum prison sentence for certain crimes, such as drug possession. These mandatory minimum sentences are set for possession of a drug over a certain amount and are set by Congress, not judges. **Judges cannot lower these sentences, even for extenuating circumstances that would otherwise lessen the punishment. This proves to be the biggest problem with mandatory minimum sentencing.** Originally, these laws were passed to ensure that certain criminals served long prison sentences; however, **critics of the system claim that these laws are cruel and ineffective. They have pointed out that these laws often unfairly target low-level offenders while the worst offenders tend to evade the system.** Another form of mandatory minimum sentencing is "three-strike law". These laws dictate that you face a minimum sentence if you are convicted of a third felony. Many states have similar laws although the penalties may vary. **The most glaring issue with mandatory minimum sentencing laws is how unfair they are. Because a judge does not have the authority to tailor the sentence to the facts specific to the individual case, someone who was an unimportant part of the drug conspiracy or someone who was simply an accessory, might receive the same minimum sentence as the ringleader of the whole operation.** Another arguing point is that **these minimums disproportionately affect minorities and are part of the War on Drugs, which is thought to be a failure. Another issue with these laws is that they do not allow for plea bargains. This means that even if the prosecutor wanted to offer a reduced sentence for a plea, they are unable to do so.** This robs those who are "less guilty" of their chance to have a less serious offense on their criminal record, resolve the matter quickly, and avoid a messy trial that could potentially harm their reputation. Many non-violent offenders get hit with these sentences and are unable to enter a plea bargain. According to several studies, mandatory minimum sentencing laws are most often applied in federal court for drug cases, as discussed. However, the vast majority of federal drug defendants are non-violent offenders. Many people feel **this policy leads to prison overcrowding of non-violent offenders.. Many offenders who may have otherwise received short sentences, or not been given a sentence at all, are imprisoned for many years due to mandatory sentencing.** As prison populations have grown exponentially, many judges and lawyers have argued that **mandatory minimums should be done away with to combat this issue. Others feel that these laws strip a judge of their traditional and proper authority to consider the actual circumstances of the crime, in addition to the individual defendant's characteristics.** Federal judges, who are appointed by the President and confirmed by the U.S. Senate, have the wisdom and training to identify the most serious drug offenders and hand down the appropriate sentencing. Mandatory minimums dispute these facts and transfer this very serious authority instead to prosecutors who may use long mandatory minimum sentences as a scare tactic to plead guilty, in exchange for a reduced sentence. Clearly, mandatory minimum sentencing is controversial and, it could be argued, does more harm than good. Those against these laws contend that they are unforgiving, they have caused untold misery and have not made us safer. Proponents of mandatory minimum sentencing argue that no level of drug offense is "low-level" and all involvement, no matter how great or small, should be punished equally for this reason.

One subject that always gets the argumentative juices going is the idea of the death penalty. Some who stand in opposition of the death penalty contend that it has racial undertones and is applied unfairly to minorities, comparable to their white counterparts. While writing about a recent decision from the Supreme Court of Washington Merrit Kennedy (2018) informs us that the state Supreme Court acknowledged that race conscious and/or unconscious racial bias plays a part in the application of the death penalty:

Kennedy, 18 (Merrit Kennedy is a reporter for NPR's Newsdesk. She covers a broad range of issues, from the latest developments out of the Middle East to science research news. Kennedy joined NPR in Washington, DC, in December 2015, after seven years living and working in Egypt. She started her journalism career at the beginning of the Egyptian uprising in 2011 and chronicled the ousting of two presidents, eight rounds of elections, and numerous major outbreaks of violence for NPR and other news outlets. She has also worked as a reporter and television producer in Cairo for **The Associated Press**, covering Egypt, Yemen, Libya, and Sudan. She grew up in Los Angeles, the Middle East, and places in between, and holds a bachelor's degree in international relations from Stanford University and a master's degree in international human rights law from The American University in Cairo.

<https://www.npr.org/2018/10/11/656570464/washington-state-strikes-down-death-penalty-citing-racial-bias>)

The Washington Supreme Court has struck down the state's death penalty, saying that it is imposed arbitrarily and with racial bias. "We are confident that the association between race and the death penalty is not attributed to random chance," the justices wrote in a majority opinion. Gov. Jay Inslee issued a moratorium on the death penalty in Washington in 2014, and on Thursday he called the opinion a "hugely important moment in our pursuit for equal and fair application of justice." Thursday's ruling makes Washington the 20th state to abolish capital punishment. According to the ACLU, this state supreme court is the third to do so citing concerns about racial disparities, along with Massachusetts and Connecticut. NATIONAL Nebraska Carries Out 1st Execution Using Fentanyl In U.S. The court decided to convert Washington's current death sentences to life imprisonment. The state's corrections division says that there are eight people currently on death row. This case was prompted by one of those inmates, Allen Eugene Gregory, who was found guilty of the 1996 aggravated first-degree murder of a woman. Gregory argued that the death penalty in Washington is "unequally applied," and the justices agreed with him. According to the opinion, the convicted murderer commissioned a study of racial bias and the death penalty that found "black defendants were four and a half times more likely to be sentenced to death than similarly situated white defendants." RELIGION Catholic Church Now Formally Opposes Death Penalty In All Cases The report "said race didn't appear to influence whether prosecutors sought the death penalty, but it was a factor in whether juries imposed a death sentence." as NPR member station KUOW reported. The state disputed the study's claims, but ultimately the justices said they afforded "great weight" to its conclusions. They also said that even though the purposes of the death penalty are "retribution and deterrence of capital crimes by prospective offenders," capital punishment fails to serve these goals as it is currently applied in the state. At the same time, they didn't completely rule out the state imposing the death penalty again in the future. "We leave open the possibility that the legislature may enact a 'carefully drafted statute' ... to impose capital punishment in this state, but it cannot create a system that offends constitutional rights," the majority opinion states. A concurring opinion also supported invalidating the death penalty, but for different reasoning. The justices declined to revisit Gregory's conviction for aggravated first-degree murder, saying that it "has already been appealed and affirmed by this court." THE TWO-WAY Oklahoma Plans To Use Nitrogen For Executions Opponents of the death penalty, such as the ACLU, are cheering the decision. "There is nothing unique about the role racism played in Washington's death penalty," said Jeff Robinson, the deputy legal director and director of the Trone Center for Justice at the ACLU. "What is rare is the Supreme Court's willingness to call out the truth that has always been there. ... Racial bias, conscious or unconscious, plays a role in the death penalty decisions across America, influencing who faces this ultimate punishment, who sits on the jury, what kind of victim impact and mitigation evidence is used, and who is given life or death," he said. KUOW reported that Cal Coburn Brown's execution in 2010 was the last time the death penalty was carried out in Washington.

A little known aspect of the Criminal Justice System is practice of electing judges. There are some jurisdictions in the United States in which the judges are not appointed but are elected officials. Evidence suggests that this practice is wrong and takes away the independence of the judiciary. Jamelle Bouie (2011) explains how this can cause problems in the application of the law and in sentencing of those convicted of crimes:

Bouie, 11 (Jamelle Bouie is a Knobler Fellow at The Nation Institute and a Writing Fellow for The American Prospect magazine in Washington D.C. His speciality is US politics—with a focus on parties, elections and campaign finance—and his work has appeared at The Washington Independent, CNN.com, and Ta-Nehisi Coates' blog at the Atlantic, in addition to regular blogging and analysis at The Prospect. He is a recent graduate of the University of Virginia, and lives in Washington D.C, though his heart remains in Charlottesville, VA. <https://www.thenation.com/article/why-judicial-elections-are-bad-thing/>)

To start, I want to provide a quick introduction. My name is Jamelle Bouie and I am an Alfred A. Knobler Journalism Fellow at *The Nation Institute*. My day job is at *The American Prospect*, where I am a writing fellow, and my work is mostly focused on political behavior and elections, with a particular interest in the nexus of money and politics. That said, I write about many things, and with any luck, I'll have a chance to explore them here. Now, on with the post. This was lost in the uproar surrounding Representative Paul Ryan's budget proposal, but yesterday—in his home state of Wisconsin—incumbent judge David Prosser lost to Assistant Attorney General JoAnne Kloppenburg in his re-election bid for the state Supreme Court. A Republican, Prosser, was widely known as an ally of Governor Scott Walker, and as such, was an obvious target for state Democrats. His defeat, by a slim margin of 208 votes, is the first electoral repudiation of Walker's anti-worker agenda, and in all likelihood, a sign of things to come for Wisconsin Republicans. While this is good news, it's worth noting that—on the whole—electing judges is a terrible idea. To wit, the United States is virtually alone among advanced democracies in its commitment to the practice. Why shouldn't we trust individual citizens with the task of staffing a judiciary? Well, first, it runs counter to the entire idea of an independent judiciary. Elections require cash, and absent full and mandatory public financing, this means fundraising. Even in the best of circumstances, it's difficult for a judge to appear impartial when, as a candidate, she relied on donors and special interests for support. This might not be a huge concern on a high-profile body, like a state Supreme Court, but it's undoubtedly a problem among the thousands of lower-court judges chosen by popular ballot. Indeed, election-year pressure can lead judges to alter their decisions; in a Pennsylvania study, for example, researchers found that all judges increase their sentences in election years. "resulting in some 2,700 years of additional prison time, or 6 percent of total prison time, in aggravated assault, rape and robbery sentences over a 10-year period." Beyond the possibility of undue influence, is simply true that judicial elections are low on the radar for most voters. The problem with electing judges is similar to the problem with electing treasurers or the problem with electing dogcatchers; with so many elections, voters don't have the time or knowledge to evaluate the candidates. As such, there are far fewer eyes watching the conduct of judicial candidates and far fewer barriers to bad behavior. In other words, judicial elections provide the illusion of popular control, at the expense of actual accountability. In an ideal world, we'd dispense with them entirely.

Prison Conditions

There has been a debate, for some time, in social circles about the effectiveness and the conditions of incarceration facilities in the United States. Some would argue that these institutions focus on packing in as many prisoners as possible without any concern for their humanity. Mike Riggs (2012) writes about the problems with overcrowding incarceration facilities:

Riggs, 12 [Mike Riggs is an associate editor at *Reason*. He previously served as the communications director for Families Against Mandatory Minimums. Before his brief hiatus from journalism, he was a staff writer for Freethink Media and *The Atlantic's* CityLab and an editor at the *Washington City Paper*. Riggs, Mike. "Four Horrifying Facts About Our Overcrowded Federal Prison System." *Reason.com*, Reason Foundation, 26 Oct. 2012, reason.com/2012/10/26/four-horrifying-facts-about-our-overcrow/.]

The number of people incarcerated by the federal government has increased roughly 500 percent since the 1980s, from 42,000 in 1987, to 218,000 in 2011. But according to a recently released GAO report titled "Growing Inmate Crowding Negatively Affects Inmates, Staff, and Infrastructure," the capacity of the federal incarceration system has failed to keep pace. Facilities are now 39 percent overcrowded and growing more so by the day.

Overcrowding is making the prison experience—bad enough under normal conditions—exponentially worse for offenders of all stripes: those with families on the outside; those who will one day have to seek gainful employment and a new life outside the prison industrial complex; and those who will spend the rest of their lives behind bars. **Here are four awful consequences of prison overcrowding highlighted by the GAO.** **4.) Almost as many people are enrolled in education and job-training programs as are waiting to get into them Prisoners need marketable skills if they're to have any hope of starting a new life outside of prison. Yet federal prisoners with subpar reading skills can't even get into basic literacy classes.** According to the GAO's report, waiting lists for federal prison programs contain almost as many people as the programs themselves. For instance: **Between 13 and 14 percent of inmates participated in literacy programs between 2008 and 2012; yet during that same period, 12 percent of inmates were on waiting lists for literacy programs.** The increasing wait times for education and job training programs is system-wide. Likewise, inmate employment opportunities within prisons are decreasing even as the number of prisoners rises. Paying between 23 cents and \$1.15 per hour, jobs at UNICOR factories, a government-owned company that uses prison labor to manufacture goods solely for purchase by government agencies, are the highest paying ones available to federal inmates. Yet the number of UNICOR factories has fallen from a peak of 110 in 2007, to 88 in 2011; and the number of UNICOR jobs has fallen from 23,000 in 2007, to 14,200 in 2011. Due to criticism of the company's ability to undercut privately owned businesses that contract with the federal government, UNICOR will likely offer even fewer jobs in the future. **3.) Overcrowding makes visits from family difficult** For many federal prisoners, visits from family members are their only glimmers of hope. They're also a logistical nightmare, as many offenders are housed hundreds of miles from their hometowns and their families. Overcrowding, according to the GAO, has created a slew of new problems for prisoners with families. **"Limited visiting capacity and the larger numbers of inmates can lead to frustrations for inmates and visitors, such as when visits are shorter or visitors are turned away because there are too many visitors on a particular day,"** the GAO reports says. At one facility GAO reviewed, visitors had to wait several hours after arriving at the prison to see their incarcerated family members. **At another facility, there were three prison phones for every 156 inmates who wanted to call home.** The only prisons where overcrowding has not affected visitation hours are facilities housing immigrant violators—likely because their families are in another country; or, if they are in the U.S., do not want to risk being picked up themselves for immigration violations. **2.) Drug offenders make up almost half the federal prison population, but they aren't getting the help they need.** The amount of time drug offenders serve in federal prison has increased 250 percent since 1987, and as a result, **drug offenders now make up 48 percent of the federal prison population. Yet at high, medium, low, and minimum security prisons, the number of inmates waiting to enroll in drug treatment programs between 2006-2011 was much larger** than the number of inmates enrolled in those programs, **and the average wait time for entrance into in-prison rehab programs ranged from 131 days in high security prisons, to 80.2 days in minimum security prisons.** **"According to BOP officials,"** the GAO report says, "if BOP cannot meet the substance abuse treatment or education needs of inmates because it does not have the staff needed to meet program demand, **some inmates will not receive programming benefits.**" This is especially troublesome considering that successfully completing a drug treatment program is one of the few ways a drug offender can reduce his sentence. **1.) Increased potential for riots and gang violence** To make room for more inmates, **federal prisons have crammed cells with beds and refurbished recreational areas as sleeping quarters, which causes increased tension between prisoners, especially in prisons with large gang presences.** Additionally, BOP has allowed the prisoner-to-staff ratio to increase from 3.5 prisoners for every staff member in 2006, to 5 prisoners for every staff member in 2011. As a result, says the GAO, BOP employees are more fearful than ever about the likelihood of prison riots.

In addition to the overcrowding of prisons and jails, incarcerated inmates do not have access to health care and other mental health services that are critical. Joshua Price (2015) writes about the physical and psychological toll of being denied access to this important care:

Price, 15 (JOSHUA M. PRICE is an associate professor of sociology at SUNY-Binghamton and the director of the Broome County Jail Health Project, based in upstate New York. *Prison and Social Death* p.9-10;

<https://documentcloud.adobe.com/link/track?uri=urn%3Aaaid%3Ascde%3AUS%3A3cd71ed0-coa2-42c8-ae97-9459adaad4b5> Published 2015.)

Many we interviewed at the jail were confident and calm. Others were terrified, or despondent. Some were in physical pain during the interview itself. Though almost everyone we interviewed was lucid, sober, and direct, I interviewed a few who were obviously mentally ill— who heard screams and voices in their heads, or who didn't have a clear sense of how long they had been incarcerated, or who genuinely didn't seem to understand what they had been charged with or why they were in jail, or who were desperate for their medication. The stories the people in jail told me were often harrowing. We interviewed someone who had gone into a diabetic coma when denied his insulin shots; a woman who showed me her scarlet, swollen limb, whose skin was peeling, and who told me she was worried she had gangrene but could not get medical attention. I interviewed people forced to languish in their cells for days with a burst appendix or a fractured vertebra before they received anything other than Pepto- Bismol or Advil. We found many examples of neglect or abusive treatment that interfered with incarcerated women's reproductive freedom, including denial of prenatal care and lack of access to abortion (resulting in, for example, unwanted births, tubal pregnancies, and other added health risks to women with problem pregnancies), and no routine preventive care. We saw patterns emerge from interviewing women about their gynecological and other health care needs, women who needed pap smears, breast exams, prenatal care and counseling, who suffered from untreated yeast infections, who had not been given their HIV cocktail or their hepatitis medication, who were worried they had a problem pregnancy but could not receive a medical exam, who had swollen limbs, open wounds, or who simply lacked a diagnosis. Their health seemed to be treated with indifference and sometimes with antipathy. To be in prison is to be ignored, shunted aside, and "treated as garbage," as one long- termer remarked. People in jail generally recognize suffering in solitude and without recourse as violent and humiliating. Poor health care, or withholding adequate health care, can be in effect a form of punishment (see Farmer 2003). This is especially true when poor health care is rampant, routine, and even institutionalized. Prison violence thus cannot be limited simply to intentional physical abuse by other incarcerated people or by a specific guard or guards. It involves institutionalized forms of mistreatment, including poor health care. Prison violence also includes other routine practices that are arguably abusive, such as pat- downs and cavity searches (see chapters 2 and 3; also see A. Davis 2003; George 1993; Shakur 2001). Shackling pregnant women is one such practice. After interviewing a pregnant woman who was shackled, one of my students, Noelle Paley, herself a mother, commented on how dangerous it could be to make a pregnant woman walk unassisted. Pregnancy, she pointed out, changes one's center of gravity and equilibrium. If the woman we interviewed had fallen, she would have had no way to break her fall, since her hands were shackled to her waist.

One tactic that is used frequently in prisons and jails is solitary confinement. Not only has the usage of solitary confinement skyrocketed since the Reagan administration but we have also warehoused large populations of disabled bodies in solitary. Terry Allen Kupers (2017) talks about the problems and impacts associated with solitary confinement:

Kupers, 17 (Terry Allen Kupers, M.D., M.S.P., is a psychiatrist and Professor Emeritus at The Wright Institute Graduate School of Psychology. He is an expert on the mental health effects of solitary confinement, and he has testified in class action lawsuits about jail and prison conditions, the quality of mental health care in prison, and the effects of sexual abuse behind bars. He serves as an expert witness for the National Prison Project of the ACLU, the Center for Constitutional Rights, The Southern Poverty Law Center and Human Rights Watch, and is the author of *Solitary*, as well as *Prison Madness: The Harm of Solitary Confinement*" <https://www.psychologytoday.com/us/blog/prisons-and-prisms/201707/the-harm-solitary-confinement>.) /

In the late 1980's, a historic wrong turn occurred. The jails and prisons were plagued by violence and seemed out of control. Instead of down-sizing the population and expanding rehabilitation programs—reasonable and safe measures that would have

effectively resolved the crisis—the powers that be decided to lock up “the worst of the worst” in solitary confinement, often in special facilities called supermax prisons. Tanya’s story is fairly representative of the dreadful result. Because of rule violations, Tanya (not her real name) had been consigned to SHU (the acronym for supermax isolation) and had spent two years there before being returned to general population a week prior to our meeting. The SHU had an “extreme effect” on her, and she described to me how she “flipped out”—including frequent anxiety attacks and paranoia. She associated being in SHU with being locked in the closet as a girl and had many “reliving” experiences while in SHU. Her mother would beat her before locking her in a closet, and the two occasions when officers did a “takedown” she felt she was reliving that traumatic experience. In SHU she cried a lot and was overwhelmed by very pain-ful memories. She described wanting to tell staff about the closet, but in solitary the staff did not really engage prisoners in conversation. Tanya experienced flashbacks to abuse by her mother, had nightmares, and had phobias about rats and dogs biting her. She told me that officers used searches to harass prisoners and that they did it more to her because they knew she couldn’t control her temper. The supermax boom did not occur in a vacuum. By the mid-1970s, as the post–World War II economic prosperity declined and as wealth was more concentrated in fewer hands, the public education system and social pro-grams such as the 1960s’ War on Poverty became less of a funding priority and dwindled in scope and reach. Government officials would henceforth focus more on the maintenance of law and order, the dismantling of federal regulations on corporations, and the expansion of corporate markets and profits, even when that meant waging wars. The Reagan years put the retreat from social responsibility into overdrive, as budgets for education and safety net programs were slashed. The slashing continues today and even accelerates as foreign wars and homeland security draw heavily upon the state’s fiscal resources and as the gap between rich and poor widens. Meanwhile, many people face dismal employment prospects, they cannot find afford-able housing, and they receive inadequate medical and mental health treat-ment. Tragically, in all too many cases, they find their way into the criminal justice system. In other words, poor and disenfranchised people are “disap-peared” by an increasingly inequitable society that refuses to adequately fund services they need to stay afloat. Then, in the prisons, many of the most dis-advantaged and disabled are warehoused in solitary confinement. The public hears even less about their plight, and, not accidentally, some of the worst abuses in prison occur in secrecy in solitary confinement units. The most effective alternative to long-term solitary confine-ment would be massive reduction of the prison population with concurrent upgrading of mental health and rehabilitation programming in the com-munity as well as in correctional settings. We have learned that the more criminals that we lock away, the more those criminals are beaten, raped, and locked up in solitary, where they despair of ever returning to their families or finding meaningful employment. Eventually, 93 percent of prisoners are released, and if they were forced to endure significant time in solitary they are quite damaged.

States and the federal government have cut the number of financial aid programs and funding that has gone to educational opportunities for inmates that are incarcerated. Evidence has shown that increasing funding in this capacity decreases the need to fund prisons/jails in other areas. Ashley Smith writes (2019) about the impact of these cuts:

Smith, 19 [Smith, Ashley A. Reporter, covers community colleges, for-profit schools and non-traditional students for *Inside Higher Ed*. She joined the publication in 2015 after covering government and K-12 education for the Fort Myers *News-Press* in Florida for three years. Ashley also covered K-12 and higher education for three years at the *Marshfield News-Herald* in Wisconsin. 1/16/19 “Report Shows Benefit of Prison Education”, *Inside Higher Ed*, <https://www.insidehighered.com/quicktakes/2019/01/16/report-shows-benefit-prison-education>]

A new report by the Vera Institute of Justice and Georgetown Center on Poverty and Inequality that examined the economic benefits of educating incarcerated people recommends lifting the ban on providing federal financial aid to inmates. “While it is just

one component of a policy framework to improve people's chances post-release, restoring Pell Grant access to people in prison and rebuilding and expanding postsecondary education programs in prisons would yield far-reaching economic benefits," the report states. "Formerly incarcerated people who re-enter the labor market with greater levels of education are more likely to find employment and less likely to return to prison, potentially improving social and economic outcomes for their communities, families and themselves while leading to significant savings to states." The report, which was released today, found that 58 percent of prison inmates don't complete an education program while in prison, while 64 percent of prisoners are academically eligible to enroll in a college prison program. But only 9 percent of inmates complete a college prison program. The Second Chance Pell program, a pilot program of the U.S. Department of Education, serves 12,000 inmates a year nationally. But if the ban on federal financial aid for inmates were lifted, about 463,000 prisoners would be eligible for a Pell Grant. Employment rates for former inmates also increase by nearly 10 percent, on average, after they participate in a college program, according to the report. The combined wages earned by all formerly incarcerated people would increase by about \$45.3 million during their first year back in their communities. Expanding access to college prison programs could also reduce state prison spending. The report found that incarceration costs across states would decrease by \$365.8 million a year because recidivism rates would likely decrease.

In an ideal world, proponents of the Criminal Justice System argue that a perfect system would decrease recidivism. Evidence suggests that increasing funding for education programs would help drive down recidivism rates. Kathleen Bender (2018) writes about the problems with not funding these education opportunities for inmates and the impact it has on dictating recidivism rates:

Bender, 18 [*Kathleen Bender is a former intern for Education Policy at the Center for American Progress.* Bender, Kathleen. "Education Opportunities in Prison Are Key to Reducing Crime." *Center for American Progress*, American Progress, 30 Nov. 2018, www.americanprogress.org/issues/education-k-12/news/2018/03/02/447321/education-opportunities-prison-key-reducing-crime/.]

Education can be a gateway to social and economic mobility. This vital opportunity, however, is currently being denied to a significant portion of the more than 2.3 million individuals currently incarcerated in the United States. Compared with 18 percent of the general population, approximately 41 percent of incarcerated individuals do not hold a high school diploma. Similarly, while 48 percent of general population has received any postsecondary or college education, only 24 percent of people in federal prisons have received the same level of education. In 2016, the Vera Institute of Justice reported that only 35 percent of state prisons provide college-level courses, and these programs only serve 6 percent of incarcerated individuals nationwide. In 2015, the Obama administration announced the Second Chance Pell Pilot program—an experimental program allowing 12,000 qualifying incarcerated students to take college-level courses while in prison. The future of this program is uncertain as Congress decides whether to include Pell Grants for prisons—which currently receives less than 1 percent of total Pell program funding—in their reauthorization of the Higher Education Act. Receiving a quality education continues to be out of reach for much of the prison population due to a lack of funding for, and access to, the materials needed for the success of these programs. According to the Hamilton Project, the United States spent more than \$80 billion on corrections in 2010, with the majority of the burden put on states. In 2016, the U.S. Department of Education released an analysis which showed that over the course of three decades—from 1979 to 2013—state and local spending on prisons and jails increased at three times the rate of funding for pre-K-12 public education over the same years. To put that into perspective, the state of Maryland currently spends around \$12,000 per pre-K-12 public school student per year compared with around \$37,000 per incarcerated person per year. Nationwide, the bulk of corrections spending goes toward housing the ever-growing prison population—a consequence of the rapidly expanding U.S. penal system that disproportionately punishes low-income people of color. Rather than spending more to house the growing prison population and to fund excessive rates of incarceration, federal and state governments should focus instead on supporting rehabilitation and reducing recidivism. According to a study by the U.S. Sentencing Commission (USSC), nearly half of all individuals

released from federal prisons are rearrested within eight years of their release, and around half of those rearrested are sent back to jail. The same study found that individuals younger than 21 who are released from federal prison are rearrested at the highest rates of any age group. Individuals who did not complete high school were rearrested at the highest rate—60.4 percent—while those who had a college degree were rearrested at a rate of 19.1 percent. While incarcerated young adults and school-aged children are more likely to be rearrested, they also have a lot to gain from educational opportunities while in prison. There is a logical argument for prison education: It is a cost-effective way to reduce crime and leads to long-term benefits across the entire U.S. population. In 2016, the RAND Corporation produced a report that showed that individuals who participate in any type of educational program while in prison are 43 percent less likely to return to prison. In addition to reducing recidivism, education can improve outcomes from one generation to the next. Research shows that children with parents with college degrees are more likely to complete college, which can create social mobility for families. Prisons with college programs have less violence among incarcerated individuals, which creates a safer environment for both incarcerated individuals and prison staff. The significant personal benefits of prison education include increased personal income, lower unemployment, greater political engagement and volunteerism, and improved health outcomes. Moreover, high recidivism—which is exacerbated by lower educational attainment—also reflects a failure of the criminal justice system at large. Formerly incarcerated individuals with low levels of education often find themselves without the financial resources or social support systems upon their release from prison and therefore are more vulnerable to committing criminal acts rather than becoming reintegrated into society. Criminality negatively impacts families and communities and diverts money and resources that should be spent on preventative measures aimed at keeping people out of prison. Numerous studies highlight the negative social, psychological, and developmental effects of incarceration on the approximately 2.7 million children under age 18 who have at least one parent in prison. These negative effects can include unstable family environments, economic troubles, increased delinquency, poor school performance, and even trauma—and stress-induced mental illness. Investing in prison education rather than increased incarceration will also benefit the American economy. For any individual, not having a high school diploma closes doors to higher education, training, and employment opportunities. For formerly incarcerated individuals, the disadvantage of not having a high school diploma is compounded by the myriad barriers to successful reentry and additional stigma they face as they reenter their communities and the workforce. On average, formerly incarcerated individuals earn 11 percent less than those with no criminal record doing the same job. They are also 15 to 30 percent less likely to find a job in the first place. While investing in prison education programs will require upfront funding, the long-term economic benefits for states and localities are considerable. For every dollar spent on prison education, taxpayers are estimated to save four to five dollars that would have been spent on incarceration. Putting more money back into consumers' pockets and providing previously incarcerated individuals the necessary tools to be competitive in the job market will spur economic activity and productivity. It will also help previously incarcerated individuals become stronger players in the market—through taxes and purchasing power—and more self-sufficient citizens less reliant on government programs. Missouri, for example, saved an average of \$25,000 per year for every incarcerated individual who left prison and did not return. Nationally, the U.S. economy is estimated to lose around \$60 billion per year from loss of labor from the high numbers of incarcerated individuals. The federal government, states, and localities all play a crucial role in funding educational programs for incarcerated individuals. Additional challenges that many prison education programs face include access to technology—only 14 percent of students in prison are allowed restricted Internet access—as well as the capacity to coordinate large-scale educational programs. Other concerns include ensuring the quality of the education and that the credits are transferrable to both another correctional institution and to the college or university an individual may attend in the future. When these programs are adequately funded and successfully implemented, real change can be made. In 2017, New York Gov. Andrew Cuomo (D) took a step in the right direction by awarding more than \$7 million to colleges—including Cornell University and New York University—to offer classes in prison. Another example of educational success, The Last Mile at San Quentin State Prison is a nonprofit that partnered with the California Department of Corrections and Rehabilitation to provide incarcerated individuals with coding experience. Education can give people a voice, open up doors to a better future, and restore individuals' self-esteem and social competence. While providing opportunities for incarcerated individuals to earn a high school and eventually college degree may not fix all the systemic issues seen within the criminal justice system, education seems like a better use of tax money than funding the high recidivism rates that exist across the country. As Horace Mann once said, education is "the great equalizer," but this only works if the most vulnerable individuals have access to it. While systemic reforms ultimately rely on government policies and action,

individuals can play a role as well. Initiatives such as the Harvard Organization for Prison Education and Reform and the Petey Greene Program, **for example, send trained volunteers to tutor incarcerated individuals with the dual goal of advocating for structural reforms to prison education.** Volunteering to tutor students in prison who are working toward their GEDs will reap rewards for students, tutors, and society. From both a moral and logical perspective, cutting prison costs by investing in education provides the greatest benefit to society as a whole, and ensures that all people—regardless of their past—are given an opportunity to thrive in the future.

Juvenile detention centers are some of the most egregious violators of incarceration conditions. Kids face guard corruption, violence, and abandonment while in these child detention centers. This constant stream of negativity has caused post traumatic stress disorders, exacerbates anxiety, and depression post release. Francis Guzman (2015) gives a first hand account of the conditions in the California Youth Authority to illustrate the impact youth detention facilities have on their occupants:

Guzman, 15 (Francis Guzman, a 2012 Soros Justice Fellow, is a staff attorney at the National Center for Youth Law. “What’s Wrong with America’s Juvenile Prisons,” 26 June 2015, <https://www.opensocietyfoundations.org/voices/what-s-wrong-america-s-juvenile-prisons>)

Many people were shocked by the story of **Kalief Browder**, the young man who spent three years incarcerated at Rikers Island without a trial, and who committed suicide at his home in New York in early June. But the story hit especially hard for young people who have spent time in prison facilities. I should know: I’m one of them. At age 15, I was arrested for robbing a liquor store with a handgun. Although this was my first offense, I was sentenced to 15 years—the maximum time allowable by statute—and committed to the California Youth Authority (CYA), the state’s juvenile prison system. All told, I spent six years inside—three years before being paroled for good behavior and an additional three years for parole violations. **When I arrived in 1996, the CYA had over 10,000 youth in a prison system designed to hold only 6,000. There were unconscionable levels of violence and corruption. Many of the youth committed to the CYA had long histories of abuse, abandonment, and neglect; many more suffered from developmental disabilities. The guards, who lacked the resources, training, and human capacity to deal with such a high level of need, often resorted to violence to deal with youth who displayed problematic behaviors.** It was a time of great turmoil and confusion for me. I was terrified by my surroundings, and had no one to trust. My peers were immature and unruly. **There wasn’t a day that passed when there wasn’t some sort of physical or sexual abuse among the wards. The guards frequently smuggled in contraband and pitted older, more violent youth against wards they found annoying or challenging—that is, when they didn’t inflict the violence on these troubled youth themselves. The prison guards in CYA would say to me, “The only difference between you and me is that you got caught.” I was committed to the CYA to be rehabilitated, according to the judge who sentenced me. Instead, I came out of the justice system in far worse shape than when I went in. I learned to distrust authority, and to deal with conflict through aggression and violence. For years after my release, I suffered from post-traumatic stress, anxiety, and depression stemming from my experiences inside.** It wasn’t until I enrolled in Oxnard College that I found compassionate mentors who provided me with the education, support, and services that I needed to grow and heal. Eventually I transferred to the University of California, Berkeley, and earned a BA in English. Later, I graduated from UCLA School of Law with a specialization in public interest law and policy. Today, I am an advocate and staff attorney at the **National Center for Youth Law**. My work focuses on challenging the practice of prosecuting and incarcerating youth in California’s adult criminal justice system, while advocating for local treatment and developmentally appropriate services within the juvenile system—such as counseling, mentoring, and training—for youth who commit serious offenses. I also travel the country to raise awareness about the harms caused by jailing youth and subjecting them to harmful, punitive correctional practices. There is a widespread recognition in the U.S. and in developed countries around the world that young people are different than adults; they are less mentally culpable for their crimes, more amenable to rehabilitation, and more vulnerable to exploitation in the culture of prisons. **What I know from my own experience is that young people do not rehabilitate in coercive and punitive penal environments. They either adapt or they break.** The research on adolescent brain development and juvenile justice best practices demonstrates that youth in conflict with the law do much better in life when they are treated in the community, around adults who care for them, and provided with education and rehabilitative services. **Jailing kids is a harmful practice and should be used as a last resort, if at all.** We must break the stranglehold that law enforcement has over the treatment of youth in trouble and allow families and communities to play a larger role. Today, juvenile crime rates are at historic lows. This is not a public safety issue; it’s a public health issue. Addressing it requires us to change our approach—to shake our addiction to punishment, coercion, and prisons for children, so that nobody has to endure what Kalief Browder went through ever again.

Criminal Justice and Identity

Identity-based teams have a wealth of options to engage the topic. Teams can argue that the Criminal Justice System has been used as a tool to police non-white bodies. Some would push back and say that statistics show that minorities commit crimes at a higher rate than their white counterparts. This is functionally not true, the Sentencing Project (2018) tells us that:

The Sentencing Project, 18 [Founded in 1986, The Sentencing Project works for a fair and effective U.S. criminal justice system by promoting reforms in sentencing policy, addressing unjust racial disparities and practices, and advocating for alternatives to incarceration. “Report to the United Nations on Racial Disparities in the U.S. Criminal Justice System” <https://www.sentencingproject.org/publications/un-report-on-racial-disparities/>]

In 2016, **black Americans comprised 27% of all individuals arrested in the United States—double their share of the total population.**⁸⁾ **Black youth accounted for 15% of all U.S. children yet made up 35% of juvenile arrests in that year.**⁹⁾ What might appear at first to be a linkage between race and crime is in large part a function of concentrated urban poverty, which is far more common for African Americans than for other racial groups. This accounts for a substantial portion of African Americans' increased likelihood of committing certain violent and property crimes.¹⁰⁾ But while there is a higher black rate of involvement in certain crimes, **white Americans overestimate the proportion of crime committed by blacks and Latinos, overlook the fact that communities of color are disproportionately victims of crime, and discount the prevalence of bias in the criminal justice system.**¹¹⁾ In 1968, the Kerner Commission called on the country to make “massive and sustained” investments in jobs and education to reverse the “segregation and poverty [that] have created in the racial ghetto a destructive environment totally unknown to most white Americans.”¹²⁾ Fifty years later, the Commission’s lone surviving member concluded that “in many ways, things have gotten no better—or have gotten worse.”¹³⁾ The rise of mass incarceration begins with disproportionate levels of police contact with African Americans. This is striking in particular for drug offenses, which are committed at roughly equal rates across races. “One reason minorities are stopped disproportionately is because police see violations where they are,” said Louis Dekmar, the president of the International Association of Chiefs of Police, and chief of LaGrange, Georgia’s police department.¹⁴⁾ The chief added: “Crime is often significantly higher in minority neighborhoods than elsewhere. And that is where we allocate our resources.” Dekmar’s view is not uncommon. **Absent meaningful efforts to address societal segregation and disproportionate levels of poverty, U.S. criminal justice policies have cast a dragnet targeting African Americans.** The **War on Drugs** as well as policing policies including “Broken Windows” and “Stop, Question, and Frisk” sanction higher levels of police contact with African Americans. This includes higher levels of police contact with innocent people and higher levels of arrests for drug crimes. Thus:

There are a multitude of options other identity teams can make on this topic. There’s an argument to be made that the Criminal Justice System, and what it represents, has always stood in direct opposition of the black body. Some of the first militias that existed were to return “runaway slaves” under the waves of slave acts passed in the 1700 and 1800s. Paul Butler (2017) explains the relationship between the black body and criminal justice:

Butler, 17 (Paul Butler, Paul Butler is the author of Chokehold: Policing Black Men, “U.S. Justice is built to humiliate and oppress black men. And it starts with the chokehold”, The Guardian, 9/11, <https://www.theguardian.com/us-news/2017/aug/11/chokehold-police-black-men-paul-butler-race-america>)

Chokehold: a maneuver in which a person’s neck is tightly gripped in a way that restrains breathing. A person left in a chokehold for more than a few seconds can die. The former police chief of Los Angeles Darryl Gates once suggested that there is something about the anatomy of African Americans that makes them especially susceptible to serious injury from chokeholds, because their arteries do not open as fast as arteries do on “normal people.” The truth is any human being will suffer distress when pressure on the carotid arteries interrupts the supply of blood from the heart to the brain.

Many police departments in the United States have banned chokeholds, but this does not stop some officers from using them when they perceive a threat. The United States supreme court decided a case about chokeholds that tells you everything you need to know about how criminal “justice” works for African American men.

In 1976, Adolph Lyons, a 24-year-old black man, was pulled over by four Los Angeles police officers for driving with a broken taillight. The cops exited their squad cars with their guns drawn, ordering Lyons to spread his legs and put his hands on top of his head. After Lyons was frisked, he put his hands down, causing one cop to grab Lyons’s hands and slam them against his head. Lyons had been holding his keys and he complained that he was in pain. The police officer tackled Lyons and placed him in a chokehold until he blacked out. When Lyons regained consciousness, he was lying facedown on the ground, had soiled his pants, and was spitting up blood and dirt. The cops gave him a traffic citation and sent him on his way. Lyons sued to make the LAPD stop putting people in chokeholds. He presented evidence that in recent years 16 people – including 12 black men – had died in LAPD custody after being placed in chokeholds. In *City of Los Angeles v. Lyons*, the US supreme court denied his claim, holding that because Lyons could not prove that he would be subject to a chokehold in the future, he had no “personal stake in the outcome”. Dissenting from the court’s opinion, Thurgood Marshall, the first African American on the supreme court, wrote: “It is undisputed that chokeholds pose a high and unpredictable risk of serious injury or death. Chokeholds are intended to bring a subject under control by causing pain and rendering him unconscious. Depending on the position of the officer’s arm and the force applied, the victim’s voluntary or involuntary reaction, and his state of health, an officer may inadvertently crush the victim’s larynx, trachea, or hyoid. The result may be death caused by either cardiac arrest or asphyxiation.

An LAPD officer described the reaction of a person to being choked as “do[ing] the chicken”, in reference apparently to the reactions of a chicken when its neck is wrung.”

The work of police is to preserve law and order, including the racial order. Hillary Clinton once asked a room full of white people to imagine how they would feel if police and judges treated them the way African Americans are treated. If the police patrolled white communities with the same violence that they patrol poor black neighborhoods, there would be a revolution.

The purpose of my book, Chokehold, is to inspire the same outrage about what

the police do to African Americans, and the same revolution in response. A chokehold is a process of coercing submission that is self-reinforcing. A chokehold justifies additional pressure on the body because the body does not come into compliance, but the body cannot come into compliance because of the vise grip that is on it. **This is the black experience in the United States. This is how the process of law and order pushes African American men into the criminal system. This is how the system is broke on purpose.** There has never, not for one minute in American history, been peace between black people and the police. And nothing since slavery – not Jim Crow segregation, not lynching, not restrictive covenants in housing, not being shut out of New Deal programs like social security and the GI bill, not massive white resistance to school desegregation, not the ceaseless efforts to prevent blacks from voting – nothing has sparked the level of outrage among African Americans as when they have felt under violent attack by the police. Most of the times that African Americans have set aside traditional civil rights strategies like bringing court cases and marching peacefully and instead have rioted in the streets and attacked symbols of the state have been because of something the police have done. **Watts in 1965, Newark in 1967, Miami in 1980, Los Angeles in 1992, Ferguson in 2015, Baltimore in 2016, Charlotte in 2016 – each of these cities went up in flames sparked by the police killing a black man. The problem is the criminal process itself.** Cops routinely hurt and humiliate black people because that is what they are paid to do. Virtually every objective investigation of a US law enforcement agency finds that the police, as policy, treat African Americans with contempt. In New York, Baltimore, Ferguson, Chicago, Los Angeles, Cleveland, San Francisco, and many other cities, **the US justice department and federal courts have stated that the official practices of police departments include violating the rights of African Americans. The police kill, wound, pepper spray, beat up, detain, frisk, handcuff, and use dogs against blacks in circumstances in which they do not do the same to white people. It is the moral responsibility of every American, when armed agents of the state are harming people in our names, to ask why. Every black man in America faces a symbolic chokehold every time he leaves his home. The sight of an unknown black man scares people, and the law responds with a set of harsh practices of surveillance, control and punishment designed to put down the threat.** The people who carry out the chokehold include cops, judges, and politicians. But it's not just about the government. It's also about you. People of all races and ethnicities make the most consequential and the most mundane decisions based on the chokehold. It impacts everything from the neighborhood you choose to live in and who you marry to where you look when you get on an elevator. I like hoodies, but I won't wear one, and it's not mainly because of the police. It's because when I put on a hoodie everybody turns into a neighborhood watch person. When the sight of a black man makes you walk quicker or check to see if your car door is locked, you are enforcing the chokehold. You are not alone. As an African American man, I'm not only the target of the chokehold. I've also been one of its perpetrators. I've done so officially – as a prosecutor who sent a lot of black men to prison. I represented the government in criminal court and defended cops who had racially pro-led or used excessive force. Many of those prosecutions I now regret. I can't turn back time, but I can expose a morally bankrupt system. That's one reason I wrote this book. But before I get too high and mighty, you should know that I've also enforced the chokehold outside my work as a prosecutor. I am a black man who at times is afraid of other black men. And then I get mad when people act afraid of me. Other times I have been more disgusted or angry with some of my brothers than scared. I read the news articles about "black-on-black" homicide in places like Chicago and Los Angeles. I listen to some hip-hop music that seems to celebrate thug life. And as a kid I got bullied by other black males. Sometimes I think if brothers would just do right, we would not have to worry about people being afraid of us. I have wondered if we have brought the chokehold on ourselves. In my years as a prosecutor, I learned some inside information that I am now willing to share. Some of it will blow your mind, but I don't feel bad for telling tales out of school. I was on the front lines in carrying out the chokehold. Now I want to be on the front lines in helping to crush it. My creds to write this book don't come just from my experience as a law enforcement officer, my legal training at Harvard, or the more than 20 years I have spent researching criminal justice. I learned as much as an African American man who got arrested for a crime I did not commit – during the time that I served as a federal prosecutor. I didn't beat my case because I was innocent, even though I was. I beat my case because I knew how to work the system. The chokehold does not stem from hate of African Americans. **Its anti-blackness is instrumental rather than emotional.** As slaves built the White House, the chokehold builds the wealth of white elites. Discriminatory law enforcement practices such as stop and frisk, mass incarceration, and the war on drugs are key components of the political economy of the United States. After the civil rights movement of the 1960s stigmatized overt racism, the national economy, which from the founding has been premised on a racialized form of capitalism, still required black bodies to exploit. The chokehold evolved as a "color-blind" method of keeping African Americans down, and then blaming them for their own degradation. The rap group Public Enemy said: "It takes a nation of millions to hold us back." Actually all it takes is the chokehold. It is the invisible fist of the law. The chokehold means that what happens in places like Ferguson, Missouri, and Baltimore, Maryland – where the police routinely harass and discriminate against African American – is not a flaw in the criminal justice system. Ferguson and Baltimore are examples of how the system is supposed to work. The problem is not bad-apple cops. The problem is police work itself. American cops are the enforcers of a criminal justice regime that targets black men and sets them up to fail. The chokehold is how the police get away with shooting unarmed black people. Cops are rarely prosecuted because they are, literally, doing their jobs. This is why efforts to fix "problems" such as excessive force and racial profiling are doomed to fail. If it's not broke, you can't fix it. **Police violence and selective enforcement are not so much flaws in American criminal justice as they are integral features of it.** The chokehold is why, legally speaking, black lives don't matter as much as white lives. The whole world knows that the United States faces a crisis in racial justice, but the focus on police and mass incarceration is too narrow. We might be able to fix those problems the way that we "fixed" slavery and segregation, but the chokehold's genius is its mutability. Throughout the existence of America, there have always been legal ways to keep black people down. Slavery bled into the old Jim Crow; the old Jim Crow bled into the new Jim Crow. In order to halt this wretched cycle we must not think of reform – we must think of transformation. The United States of America must be disrupted, and made anew. This book uses the experience of African American men to explain why. One of the consequences of the chokehold is mass incarceration, famously described by Michelle Alexander as "the new Jim Crow". The chokehold also brings us police tactics such as stop and frisk, which are designed to humiliate African American males – to bring them into submission. The chokehold demands a certain kind of performance from a black man every time he leaves his home. He must affirmatively demonstrate – to the police and the public at large – that he is not a threat. Most African American men follow the script. Black men who are noncompliant suffer the consequences. The chokehold is perfectly legal. Like all law, it promotes the interests of the rich and powerful. In any system marked by inequality, there are winners and losers. Because the chokehold imposes racial order, who wins and who loses is based on race. **White people are the winners. What they win is not only material, like the cash money that arresting African Americans brings to cities all over the country in fines and court costs. The criminalizing of blackness also brings psychic rewards. American criminal justice enhances the property value of whiteness.**

Living in a heteronormative world is next to impossible, especially when you look at how these LGBTQ+ identities and the criminal justice system "coexist." There are a myriad of issues that exist when you look at how this population of people are treated in the prison system. Joshua Russell (2015)

writes about the unique struggles they face and the caused of a lot these problems:

Russell, 15 (Joshua, a graduate of Furman University, “Why Criminal Justice Reform Must Include Consideration for LGBT Prisoners <http://www.sharedjustice.org/domestic-justice/2015/12/16/why-criminal-justice-reform-must-include-consideration-for-lgbt-prisoners>)

The time for rethinking who is locked up, why, and for how long, is apparently now, and not just for Congress. Many states have begun re-examining their sentencing laws, and some are starting to slowly reduce their gargantuan prison populations. However, lost in all of this progress are the unique struggles that the LGBT community faces in the criminal justice system. The problems that LGBT individuals face in the US criminal justice system begin in the juvenile system. Approximately 5-7% of the US juvenile population (those under 18) is estimated to be LGBT, but 20% of incarcerated juveniles identify as LGBT. An astounding 40% of juvenile girls in the criminal justice system identify as LGBT. The sheer numbers alone should raise some serious concerns. The experiences of LGBT youth are likely to persist in the adult system if current rates and practices continue. And just what are these experiences? First, it should be noted that while the highest percentage of incarcerated LGBT individuals is at the juvenile level, there are many in the adult criminal justice system level that suffer as well. People struggling with gender identity issues are rarely accommodated, and frequently discriminated against by police and prison officials. Second, while the unusually high number of LGBT juveniles incarcerated should be explored, so should the suffering that they experience. The problems that LGBT adults face in the criminal justice system are mirrored in the juvenile system. LGBT prisoners are often subjected to discrimination, physical, sexual, and psychological abuse. Some of this is a direct result of actions taken by correctional officers or police, while some of it is a result of neglect. Transgender prisoners, particularly juveniles, are especially at risk because there are few facilities equipped to properly classify them in the existing prison system. In addition to a plethora of abuses, both direct and indirect, the high number of LGBT youth in prison is a problem that has not been addressed by lawmakers eager to reduce mass incarceration. Why are so many LGBT youth a part of the criminal justice system? Rejection by families, peers, and their communities is one of the main answers. LGBT youth also become homeless at a higher rate than heterosexual youth for these reasons; which also contributes to the disproportionate rate of confinement. Many of these issues can be ameliorated by changing the way that individuals who identify as LGBT are treated by law enforcement and corrections officers. Police and correctional staff should be required – indeed, expected – to not discriminate on the basis of their orientation. This includes acknowledging the identities of transgender and intersex people, and implementing basic surveys about gender to better identify the best placements for inmates. Implementing policies that reflect SOGIE (Sexual Orientation, Gender Identity, and Gender Expression) are key. Detailed recommendations for policies on LGBT youth in the criminal justice system are available from the Juvenile Detention Alternatives Initiative. At the very least, basic standards for LGBT prisoners should be enacted that ensure their equal treatment under the law. Many of these can come at the state and local level, but it they are needed at the federal level as well. Furthermore, if the federal government were seen to embrace the needs of LGBT individuals in the criminal justice system, it could provide a guide for changes at the state level. The federal government could also incentivize states to reform their treatment of LGBT individuals through grants for training and educating personnel.

Forensic Science

Once someone has been convicted of a crime, they are thrown into a cell or put on death row; sometimes for crimes they didn't commit. In some

jurisdictions, the onus is put on the defendant when there is DNA evidence found at the scene of a crime and it needs to be testing. Most people think that the state automatically tests evidence but that isn't the case; in some jurisdictions if the defendant doesn't pay for the DNA testing then it will go untested. This is problematic because states like Texas have executed people who were convicted of crimes where DNA testing would have shown the person on trial likely wasn't the perpetrator of the crime(s) they were accused of. David Mann (2010) discusses when Texas executed a man who more than likely didn't commit the crime he was convicted of:

Mann, 10 [Dave Mann has been with the Observer since 2003. Before that, he worked as a reporter in Fort Worth and Washington, D.C. He was born and raised in Philadelphia., 11-11-10, Texas Observer, "DNA Tests Undermine Evidence in Texas Execution ", <https://www.texasobserver.org/texas-observer-exclusive-dna-tests-undermine-evidence-in-texas-execution/>]

New results show **Claude Jones was put to death on flawed evidence**. Hear Dave Mann's interview with KUT's Matt Largey on All Things Considered Claude Jones always claimed that **he wasn't the man who walked into an East Texas liquor store in 1989 and shot the owner. He professed his innocence right up until the moment he was** strapped to a gurney in the Texas execution chamber and **put to death** on Dec. 7, 2000. **His murder conviction was based on a single piece of forensic evidence** recovered from the crime scene—**a strand of hair—that prosecutors claimed belonged to Jones**. But **DNA tests** completed this week at the request of the Observer and the New York-based Innocence Project **show the hair didn't belong to Jones** after all. **The day before his death** in December 2000, **Jones asked for a stay** of execution **so the strand of hair could be submitted for DNA testing. He was denied** by then-Gov. George W. Bush. A decade later, **the results** of DNA testing not only undermine the evidence that convicted Jones, but **raise the possibility that Texas executed an innocent man**. The DNA tests—conducted by Mitotyping Technologies, a private lab in State College, Pa., and first reported by the Observer on Thursday—show **the hair belonged to the victim of the shooting, Allen Hilzendager**, the 44-year-old owner of the liquor store. Because the DNA testing doesn't implicate another shooter, the results don't prove Jones' innocence. But the hair was the only piece of evidence that placed Jones at the crime scene. So while the results don't exonerate him, they raise serious doubts about his guilt. As with the now-infamous Cameron Todd Willingham arson case, the key forensic evidence in a Texas death penalty case has now been debunked. **"The DNA results prove that testimony about the hair sample on which this entire case rests was just wrong,"** said Barry Scheck, co-founder of the Innocence Project, in a statement. **"Unreliable forensic science and a completely inadequate post-conviction review process cost Claude Jones his life."**

Division of Ground

Affirmative

Affirmatives will have a plethora of avenues to address the reformation of the handling of police officers. The federal government could require that local police officers wear body cameras to capture their interactions with civilians. Affirmatives can require that local municipalities establish local review boards that would investigate police misconduct; this would take the investigative abilities away from police departments with conflicts of interest. Another avenue affirmatives could use to combat police misconduct is to create a comprehensive public database that would document and track the types of police misconduct. Affirmatives could also implement Obama-era regulations that would allow the Justice Department to sue police departments for instances of police misconduct.

When it comes to reforming the inner-workings of the courts there are some ways the affirmative can implement said reforms. Affirmatives can change the way plea-bargains work by making disallowing certain types of charges to be

plea-bargained. Additionally, affirmatives can also change/end mandatory minimum sentencing and how bail is assigned/applied. Affirmatives can also change the way judges obtain their seat at the bench by making illegal the practice of allowing judges the ability to run for the bench. Depending on what the final wording of the topic is affirmatives may be able to change the way certain drugs are scheduled federally. Affirmatives may be able to reform how certain laws are applied to juvenile offenders.

Addressing prisons provides a multitude of avenues for affirmatives to navigate the topic. Affirmatives can explore the number of ways to address prison overcrowding by allowing more credit for good behavior, allow programs that allows for the removal of time for completion of certain programs (drug rehab, work programs, etc.), releasing elderly patients from the custody of the Bureau of Prisons, or sending foreign inmates back to their home countries. Affirmatives could increase access to healthcare services, both mental and physical. Affirmatives can address the requirements for solitary confinement or abolish the practice completely. Affirmatives can also address the backlog of the rape kits that have gone unprocessed or increase access to post-conviction DNA testing for people convicted when the DNA evidence could possibly exonerate them. Affirmatives can also increase opportunities, possibly by lifting the ban on financial aid for inmates, to educational programs in prison facilities.

Depending the mechanism they choose, affirmatives have a number of advantage areas they can claim. Reforming the judicial system would be good for the economy while simultaneously strengthening our democracy. Additionally, affirmatives can claim that they are eroding certain ableist structures within the Criminal Justice System or that they decrease structural violence that is perpetrated by the Criminal Justice System. Certain reformations could possible increase political engagement of citizens and positive impact on decreasing crime rates. Other affirmatives can decrease the amount of police corruption by holding officers more accountable for their actions. Additionally, some reforms could allow for the court system to operate more efficiently thus decreasing court clog. If an affirmative chooses to use the courts they could claim impacts predicated off of judicial activism or providing a check on unrestrained executive power when it comes to enforcement of laws.

Negative

At first glance, it may seem that negatives do not have much ground on a topic such as this but that couldn't be further from the truth. In response to police body cameras they can say that these cameras are too expensive for some local jurisdictions or that the video that is stored could be hacked by those with bad intentions. Negatives could also argue that increased scrutiny on police would lead to more officers leaving the profession, which would have an adverse effect on local crime rates. They could also articulate that officers, who may leave the force, could take matters into "their own hands" and start non-deputized police forces that would wreak havoc on specific communities. Negatives can also articulate that keeping the body cam footage that shows innocent civilians may be an invasion of their privacy.

When it comes to the operation of the court systems negatives also have a lot of tools at their disposal. They can argue that traditional modes of doing business like plea-bargaining and bail actually work and keep the system moving in an expedited fashion. They can also argue that without bail the system would not be funded or that bail is one of the few guarantees people show up for court without having to imprison them before trial. If affirmatives change the way drugs are scheduled then negatives can argue that this would lead to an increase in drug use, which would have an adverse effect on the drug epidemic. Negatives can also argue that mechanisms like the death penalty actually work and shouldn't be reformed or abolished. They can also argue that the election of judges isn't inherently a bad thing; they can argue that it doesn't sway decisions on the stand or other options, like political appointments, would be net worse. Negatives can also PIC out of allowing special interest funding (like super PACs) to influence judge elections.

Negatives also have a few ways they can negative affirmatives that hope to reform prison conditions. Negatives can argue that the current system, even after reform, focuses too much on punishment when it should be focused on rehabilitation. They can also argue that a system that doesn't value addressing the mental health aspect of crime will never solve any of the problems they isolate. Negatives also have unique links to affirmatives that attempt to regulate or abolish the use of private prisons, those negative teams can claim that such action would trigger panic in the stock market thus hurting the economy.

Negatives will also have access to some generic arguments that will be available to them on a topic such as this. Negatives can read Agent CPs to test the mechanism of the aff; there is a debate to be had on whether Congress or the courts are more effective at initiating reform in the Criminal Justice System. Another CP mechanism they can use could be to PIC out of certain planks the aff attempts to reform and force them to defend why their specific reforms are uniquely key.

Negatives also have some disadvantages at their disposal as well. There will definitely be some good ground for links to Politics DAs because different reforms will require concessions from different political parties thus triggering the links. They also have Federalism DAs they can read as well; one could argue that reforming the Criminal Justice System is more of states' right and not one that is required by the federal government. Negative teams can also read Backlash DAs. Certain reforms could lead to a backlash towards the police officers or against the members of the community from police officers that do not agree with the reforms. The brunt of the funding, for a lot of affirmatives, will be absorbed at the state level, which means that funding will trade off with other programs in those states.

Negatives also have some good case arguments at their disposal as well. Giving police officers broad discretion will be crucial in stopping the increase in homegrown terrorism in the United States. They can also argue there are alternate causes for a lot of the affirmative impacts like the structure of the Criminal Justice System is wrong and one reform won't fix it or that there's not enough training in the world to fix implicit bias. Also, the negative could argue that a lot of decisions police officers make are life or death that happen within a

split second. Negatives can also argue that Attorney General Barr will choose non-enforcement.

Potential Resolution Wordings

The top three (3) are the author's preferred resolutions. They provide an adequate division of ground for both affirmatives and negatives.

1. Resolved: The United States federal government should substantially reform the criminal justice system in one or more of the following areas: police misconduct, forensic science, incarceration conditions, and/or sentencing.

- This resolution's wording has one glaring concern is that it could allow for a topic that is too wide in scope that would make it nearly impossible to argue as the negative.

2. Resolved: The United States federal government should substantially reform the criminal justice system in one or more of the following areas: police misconduct, drug scheduling, incarceration conditions, and/or sentencing.

- This resolution suffers from similar problems like that one before. If any list topic is picked then it will need to be a list that is both broad in nature and not too limiting in practice.

3. Resolved: The United States should substantially increase funding for existing offender reentry programs in prisons in one or more of the following areas: education/training, work release, drug/alcohol treatment, mental health, health, & children and family services.

- A lot of the topics listed in this resolution are hinted at; this is one that was pulled from the 2018 college topic process. This resolution mandates federal government spending on offender reentry programs. While this provides an adequate amount of ground, it would only allow for students to debate the back end of the Criminal Justice System.

4. Resolved: The United States federal government should substantially reform the criminal justice system in one or more of the following areas: police misconduct, judicial misconduct, incarceration conditions, and/or sentencing.

- Any topic that includes "judicial misconduct" may not gain traction because some of the problems associated with judges, which are discussed in this paper, are not applicable to large parts of the United States.

5. Resolved: The United States federal government should substantially reform its criminal justice system.

- Arguably the worst of all the resolutions. It is entirely too large and vacuous to debate. Without any real limiters it becomes almost undebatable.

6. Resolved: The United States federal government should substantially increase funding for front-end criminal justice reform.

- This topic would run into problems with what is defined as “front-end” criminal justice reform. Some of the literature is split on what that actually means but it would include things like reforming police officers in schools, bail and/or sentencing reform, and the over charging of defendants.

7. Resolved: The United States federal government should substantially increase funding for back-end criminal justice reform.

- This would run into similar trouble as the preceding resolution would; the phrase “back-end” criminal justice reform could take multiple forms. Generally these kinds of reforms involve changes to probation, parole, post-incarceration supervision, and possibly restoration of voting rights.

Key Definitions

United States federal government

Amy Blackwell, (J.D., Staff, U. Virginia Law Library), THE ESSENTIAL LAW DICTIONARY, 2008, 187.

Federal: Relating to the central government of a union of states, such as the national government of the United States.

Carol-June Cassidy, (Editor), CAMBRIDGE DICTIONARY OF AMERICAN ENGLISH, 2nd Ed., 2008, 308. Federal government: of or connected with the central government

Carol-June Cassidy, (Editor), CAMBRIDGE DICTIONARY OF AMERICAN ENGLISH, 2nd Ed., 2008, 308.

Federal government: a system of government in which states unite and give up some of their powers to a central authority

Daniel Oran, (Assistant Dir., National Paralegal Institute & J.D., Yale Law School), ORAN'S DICTIONARY OF

THE LAW, 4th Ed., 2008, 206. Federal government: The U.S. federal government is the national, as opposed to state, government.

James Clapp, (Member of the New York Bar, Editor), RANDOM HOUSE WEBSTER'S POCKET LEGAL DICTIONARY, 3rd Ed., 2007, 103. Federal government: Relating to the government and law of the United States, as distinguished from a state.

Maurice Waite, (Editor), OXFORD DICTIONARY & THESAURUS, 2007, 377. Federal government: relating to the central government of a federation.

Michael Agnes, (Editor), WEBSTER'S NEW WORLD DICTIONARY, 4th College Edition, 2007, 290. Federal government: Of the central government.

Michael Agnes, (Editor), WEBSTER'S NEW WORLD DICTIONARY, 4th College Edition, 2007, 290. Federal government: Of a union of states under a central government.

Substantially

“Substantial” means the “essential” part of something.

Christine Lindberg, (Editor), OXFORD COLLEGE DICTIONARY, 2nd Ed., 2007, 1369. Substantially: Concerning the essentials of something.

Elizabeth Jewell, (Editor), THE OXFORD DESK DICTIONARY AND THESAURUS, 2nd Ed., 2007, 835. Substantially: Essentially, at bottom, fundamentally, basically, in essence, intrinsically.

Elizabeth Jewell, (Editor), THE OXFORD DESK DICTIONARY AND THESAURUS, 2nd Ed., 2007, 835. Substantially: Essential; true in large part.

Maurice Waite, (Editor), OXFORD DICTIONARY & THESAURUS, 2007, 1032. Substantially: in essence, basically, fundamentally.

Maurice Waite, (Editor), OXFORD DICTIONARY & THESAURUS, 2007, 1032. Substantially: concerning the essential points of something

Maurice Waite, (Editor), OXFORD DICTIONARY & THESAURUS, 2007, 1032. Substantially: fundamental, essential, basic.

Michael Agnes, (Editor), WEBSTER'S NEW WORLD DICTIONARY, 4th College Edition, 2007, 780. Substantial: In essentials.

"Substantial" means "valuable."

Christopher Leonesio, (Managing Editor), AMERICAN HERITAGE HIGH SCHOOL DICTIONARY, 4th Ed., 2007, 1376. Substantial: Considerable in importance, value, degree, amount, or extent.

Daniel Oran, (Assitant Dir., National Paralegal Institute & J.D., Yale Law School), ORAN'S DICTIONARY OF THE LAW, 4th Ed., 2008, 510. Substantial: Valuable, real, worthwhile.

"Substantial" means permanent as opposed to temporary.

Richard Bowyer, (Editor), DICTIONARY OF MILITARY TERMS, 3rd Ed. 2004, 235. Substantive: Permanent (as opposed to acting or temporary).

"Substantial" means relating to the "fundamental substance" of a thing.

Sandra Anderson, (Editor), COLLINS ENGLISH DICTIONARY, 8th Ed., 2006, 1606. Substantial: Of or relating to the basic or fundamental substance or aspects of a thing.

Christopher Leonesio, (Managing Editor), AMERICAN HERITAGE HIGH SCHOOL DICTIONARY, 4th Ed., 2007, 1376. Substantial: Of, relating to, or having substance.

"Substantial" means of a "corporeal or material nature."

Stuart Flexner, (Editor-in-chief), R ANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE, UNABRIDGED, 2nd Ed., 1987, 1897. Substantial: Of a corporeal or material nature; tangible; real.

"Substantially" means more than 25%.

Federal Tax Regulation, Section 1.409A -3(j)6, INCOME TAX REGULATIONS (Wolters Kluwer Business Publication), 2008, 723. For this purpose, a reduction that is less than 25% of the deferred amount in dispute is not a substantial reduction."

A reduction of less than 15% is not substantial.

WORDS AND PHRASES, Vol. 40B, 2002, 326.

Where debtor-jewelry retailers historically obtained 15-25% of the inventory of their two divisions through consignments, they were not, as a matter of law, substantially engaged in selling the goods of others. In re Wedlo Holdings, Inc. (North Dakota case)

"Substantial" means "important." Amy Blackwell, (J.D., Staff, U. Virginia Law Library), THE ESSENTIAL LAW DICTIONARY, 2008, 477.

Substantial: Important, large, considerable, valuable.

Carol-June Cassidy, (Editor), CAMBRIDGE DICTIONARY OF AMERICAN ENGLISH, 2nd Ed., 2008, 873. Substantially: large in size, value, or importance

Christine Lindberg, (Editor), OXFORD COLLEGE DICTIONARY, 2nd Ed., 2007, 1369. Substantially: Of considerable importance, size, or worth.

Elizabeth Jewell, (Editor), THE OXFORD DESK DICTIONARY AND THESAURUS, 2nd Ed., 2007, 835. Substantially: Of real importance, value, or validity.

Maurice Waite, (Editor), OXFORD DICTIONARY & THESAURUS, 2007, 1032. Substantially: real, significant, important, major, valuable.

Maurice Waite, (Editor), OXFORD DICTIONARY & THESAURUS, 2007, 1032. Substantially: of great importance, size, or value.

“Substantial” means “socially important.”

Christine Lindberg, (Editor), OXFORD COLLEGE DICTIONARY, 2nd Ed., 2007, 1369. Substantially: Important in material or social terms.

“Substantial” means “not imaginary.”

Christopher Leonesio, (Managing Editor), AMERICAN HERITAGE HIGH SCHOOL DICTIONARY, 4th Ed., 2007, 1376. Substantial: True or real; not imaginary.

Maurice Waite, (Editor), OXFORD DICTIONARY & THESAURUS, 2007, 1032. Substantially: real and tangible rather than imaginary.

Increase

“Increase” means to become greater in size or degree.

Carol-June Cassidy, (Editor), CAMBRIDGE DICTIONARY OF AMERICAN ENGLISH, 2nd Ed., 2008, 441. Increase: to become or make something larger or greater.

Christine Lindberg, (Editor), OXFORD COLLEGE DICTIONARY, 2nd Ed., 2007, 687. Increase: Become or make greater in size, amount, intensity, or degree.

Christopher Leonesio, (Managing Editor), AMERICAN HERITAGE HIGH SCHOOL DICTIONARY, 4th Ed., 2007, 702. Increase: To become greater or larger.

Elizabeth Jewell, (Editor), THE OXFORD DESK DICTIONARY AND THESAURUS, 2nd Ed., 2007, 415. Increase: Build up, enlarge, amplify, expand.

Elizabeth Jewell, (Editor), THE OXFORD DESK DICTIONARY AND THESAURUS, 2nd Ed., 2007, 415. Increase: Make or become greater or more numerous.

Erin McKean, (Sr. Editor), THE OXFORD AMERICAN DICTIONARY AND THESAURUS, 2003, 751. Increase: To make or become greater in size, amount, etc., or more numerous.

Ian Brookes, (Sr. Editor), THE CHAMBERS DICTIONARY, 10th ed., 2006, 754. Increase: To grow in size or number.

Jean McKechnie, (Sr. Editor), WEBSTER’S NEW TWENTIETH CENTURY DICTIONARY, UNABRIDGED, 2nd Ed., 1979, 926. Increase: To become greater in size, quantity, value, degree, etc.

Michael Agnes, (Editor), WEBSTER'S NEW WORLD DICTIONARY, 4th College Edition, 2007, 396. Increase: To make or become greater, larger.
Sidney Landau, (Sr. Editor), CAMBRIDGE DICTIONARY OF AMERICAN ENGLISH, 2nd ed., 2008, 440. Increase: To become or make something larger or greater.

"Increase" means to make larger, even if the starting point was zero.
WORDS AND PHRASES CUMULATIVE SUPPLEMENTARY PAMPHLET, Vol. 20A, 07, 76. Increase: Salary change of from zero to \$12,000 and \$1,200 annually for mayor and councilmen respectively was an "increase" in salary and not merely the fixing of salary. King v. Herron, 243 S.E.2d36, 241 Ga. 5.

"Increase" can refer to a "net change," meaning there can be some elements going up and others going down so long as the total goes up.
WORDS AND PHRASES CUMULATIVE SUPPLEMENTARY PAMPHLET, Vol. 20A, 07, 76. Increase: Within insurance company's superintendent's employment contract, "increase" meant net increase in premiums generated by agent calculated by subtracting "lapses" or premiums lost on policies previously issued. Lanier v. Trans-World Life Ins. Co., 258 So.2d 103.

"Increase" can mean to extend in time (or duration).
WORDS AND PHRASES CUMULATIVE SUPPLEMENTARY PAMPHLET, Vol. 20A, 07, 76. Increase: A durational modification of child support is as much an "increase" as a monetary modification. State ex rel. Jarvela v. Burke, 678 N.W.2d 68.15.

"Increase" can mean an improvement in quality or intensity rather than in number.
Maurice Waite, (Editor), OXFORD DICTIONARY & THESAURUS, 2007, 526. Increase: Become or make greater in size, amount, or intensity.
Elizabeth Jewell, (Editor), THE OXFORD DESK DICTIONARY AND THESAURUS, 2nd Ed., 2007, 415. Increase: Advance in quality, attainment, etc.
Erin McKean, (Sr. Editor), THE OXFORD AMERICAN DICTIONARY AND THESAURUS, 2003, 751. Increase: Intensify a quality.

"Increase" means to "extend."
Maurice Waite, (Editor), OXFORD DICTIONARY & THESAURUS, 2007, 526. Increase: Intensify, strengthen, extend.

"Increase" means "to multiply" or "reproduce."
Christopher Leonesio, (Managing Editor), AMERICAN HERITAGE HIGH SCHOOL DICTIONARY, 4th Ed., 2007, 702. Increase: To multiply; reproduce.

"Increase" means to "supplement."
Maurice Waite, (Editor), OXFORD DICTIONARY & THESAURUS, 2007, 526. Increase: Make bigger, augment, supplement.

“Increase” refers to that which already exists.

Ian Brookes, (Sr. Editor), THE CHAMBERS DICTIONARY, 10th ed., 2006, 754.
Increase: Growth; increment; addition to the original stock.

Its

“Its” means belonging to the thing previously mentioned.

Augustus Stevenson, (Editor), NEW OXFORD AMERICAN DICTIONARY, 3rd Ed., 2010, 924. Its: Belonging to or associated with a thing previously mentioned or easily identified.

“Its” means “relating to itself” or “possessing” something.

Frederick Mish, (Editor-in-chief), WEBSTER'S COLLEGIATE DICTIONARY, 10th ed., 1993, 623. Its: Of or relating to it or itself, esp. as possessor.

“Its” means “belonging to.”

Justin Crozier, (Editor), COLLINS DICTIONARY AND THESAURUS, 2005, 448.
Its: Of or belonging to it.

Jean McKechnie, (Sr. Editor), WEBSTER'S NEW TWENTIETH CENTURY DICTIONARY, UNABRIDGED, 2nd Ed., 1979, 977. Its: Of, or belonging to, or done by it.

Erin McKean, (Sr. Editor), THE OXFORD AMERICAN DICTIONARY AND THESAURUS, 2003, 798. Its: Of itself.

Carol-June Cassidy, (Managing Editor), CAMBRIDGE DICTIONARY OF AMERICAN ENGLISH, 2nd Ed., 2008, 464. Its: Belonging to or connected with the thing or animal mentioned; the possessive form of it.

Stuart Flexner, (Editor-in-chief), RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE, UNABRIDGED, 2nd Ed., 1987, 1017. Its: The possessive form of it.

“Its” can mean simply “relating to” or “associated with.”

Frederick Mish, (Editor-in-chief), WEBSTER'S COLLEGIATE DICTIONARY, 10th ed., 1993, 623. Its: Of or relating to it or itself, esp. as possessor.

Sandra Anderson, (Editor), COLLINS ENGLISH DICTIONARY, 8th Ed., 2006, 867. Its: Belonging to, or associated in some way with.

Carol-June Cassidy, (Managing Editor), CAMBRIDGE DICTIONARY OF AMERICAN ENGLISH, 2nd Ed., 2008, 464. Its: Belonging to or connected with the thing or animal mentioned; the possessive form of it.

Reform

reform verb

re·form | \ ri-'fɔrm

\

reformed; reforming; reforms

Definition of reform

(Entry 1 of 4)

transitive verb

1a : to put or change into an improved form or condition

b : to amend or improve by change of form or removal of faults or abuses

2 : to put an end to (an evil) by enforcing or introducing a better method or course of action

3 : to induce or cause to abandon evil ways reform a drunkard

4a : to subject (hydrocarbons) to cracking

b : to produce (gasoline, gas, etc.) by cracking

reform

us /rɪ'fɔrm/

social studies to become better, or to make something better by making corrections or removing any faults:

[T] As governor, he reformed election procedures.

[I] She insists that she has finally reformed.

reform

Word forms: reforms, reforming, reformed

1. variable noun

Reform consists of changes and improvements to a law, social system, or institution. A reform is an instance of such a change or improvement.

The party embarked on a program of economic reform.

2. transitive verb

If someone reforms something such as a law, social system, or institution, they change or improve it.

...his plans to reform the country's economy.

3. transitive verb/intransitive verb

When someone reforms or when something reforms them, they stop doing things that society does not approve of, such as breaking the law or drinking too much alcohol.

When his court case was coming up, James promised to reform.

reformed adjective

...a reformed alcoholic.

re·form

v. re·formed, re·form·ing, re·forms

v.tr.

1. To improve by alteration, correction of error, or removal of defects; put into a better form or condition: reform the tax code.
 2.
 - a. To abolish abuse or malpractice in: reform the government.
 - b. To put an end to (an abuse or wrong).
 3. To induce or persuade (a person) to give up harmful or immoral practices; cause to adopt a better way of life.
 4. Chemistry To subject (hydrocarbons) to cracking.
- v.intr.
To change for the better.
- n.
1. Action to improve or correct what is wrong or defective in something: health care reform.
 2. An instance of this; an improvement: reforms in education.
- adj.
1. Relating to or favoring reform: a reform candidate for mayor.
 2. Reform Of or relating to Reform Judaism.

Criminal Justice System

criminal justice system – The system of law enforcement that is directly involved in apprehending, prosecuting, defending, sentencing, and punishing those who are suspected or convicted of criminal offences

(https://en.oxforddictionaries.com/definition/us/criminal_justice_system)

criminal justice system

"Criminal justice system" includes all activities and agencies, whether state or local, public or private, pertaining to the prevention, prosecution and defense of offenses, the disposition of offenders under the criminal law and the disposition or treatment of juveniles adjudicated to have committed an act which, if committed by an adult, would be a crime. The "criminal justice system" includes police, public prosecutors, defense counsel, courts, correction systems, mental health agencies, crime victims and all public and private agencies providing services in connection with those elements, whether voluntarily, contractually or by order of a court. [1985 c.558 §1; 1995 c.420 §4; 1997 c.433 §1]

Note: 137.651 (Definitions for ORS 137.654, 137.656 and 137.658) to 137.673 (Validity of rules) were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 137 by legislative action. See Preface to Oregon Revised Statutes for further explanation

(https://www.oregonlaws.org/glossary/definition/criminal_justice_system)

criminal justice

n. a generic term for the procedure by which criminal conduct is investigated, arrests made, evidence gathered, charges brought, defenses raised, trials

conducted, sentences rendered, and punishment carried out (<https://legal-dictionary.thefreedictionary.com/Criminal+justice+system>)

Literature on the Topic

Law Reviews/Journals

DESIGNED TO FAIL: THE PRESIDENT'S DEFERENCE TO THE
DEPARTMENT OF JUSTICE IN ADVANCING CRIMINAL JUSTICE REFORM

Rachel E. Barkow and Mark Osler

William and Mary Law Review. 59.2 (November 2017)

The president's role in advancing criminal justice reform

Barack Obama

Harvard Law Review. 130.3 (Jan. 2017)

The Time is Ripe for Criminal Justice Reform

Jason M. Pannu

Tennessee Bar Journal. 55.3 (Mar. 2019)

THE CONSENSUS MYTH IN CRIMINAL JUSTICE REFORM

Benjamin Levin

Michigan Law Review. 117.2 (Nov. 2018)

EXCESSIVE FORCE, BIAS, AND CRIMINAL JUSTICE REFORM: PROPOSALS
FOR CONGRESSIONAL ACTION

Maurice R. Dyson

Loyola Law Review. 63.1 (Spring 2017)

WHOM SHOULD WE PUNISH, AND HOW? RATIONAL INCENTIVES AND
CRIMINAL JUSTICE REFORM

Keith N. Hylton

William and Mary Law Review. 59.6 (May 2018)

Enforcement and enmeshed consequences: the limitations of conventional
criminal justice reform

Shannon A. Cumberbatch

Washington University Journal of Law & Policy. 52 (Summer 2016)

RALLYING FOR REFORM: FEDERAL CRIMINAL JUSTICE REFORM MAY BE
LANGUISHING, BUT IT'S BECOMING A REALITY FOR STATES WITH
BIPARTISAN SUPPORT

Lorelei Laird

ABA Journal. 103.12 (Dec. 2017)

The system is working the way it is supposed to: the limits of criminal justice
reform

Paul Butler

Georgetown Law Journal. 104.6 (Aug. 2016)

Trial and Error in Criminal Justice Reform

Florida Bar Journal. 84.9 (Nov. 2010)

Time for comprehensive criminal justice reform
Neal R. Sonnett
Human Rights. 36.2 (Spring 2009)

Criminal Justice Reform in Utah: From Prosecution to Parole
Jason M. Groth
Utah Bar Journal. 32.1 (January-February 2019)

Searching for solutions to the indigent defense crisis in the broader criminal
justice reform agenda
Roger A. Fairfax, Jr.
Yale Law Journal. 122.8 (June 2013)

Books

The New Jim Crow
Mass Incarceration in the Age of Colorblindness
by Alexander, Michelle

Just Mercy
A Story of Justice and Redemption
by Stevenson, Bryan

Understanding Mass Incarceration
A People's Guide to the Key Civil Rights Struggle of Our Time
by Kilgore, James William

In the Place of Justice
A Story of Punishment and Deliverance
by Rideau, Wilbert

Are Prisons Obsolete?
by Davis, Angela Y.

Invisible Punishment
The Collateral Consequences of Mass Imprisonment

No Equal Justice
Race and Class in the American Criminal Justice System
by Cole, David

Texas Tough
The Rise of America's Prison Empire
by Perkinson, Robert

Discipline and Punish: The Birth of the Prison
by Michel Foucault