

System Reform: Current Options

LOUISVILLE METRO COUNCIL, JULY 2021
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General Data on Inequities in the System

- [Equal Justice Initiative](#)
- [The Sentencing Project](#)
- [National Center for State Courts](#)
- [Bureau of Justice Statistics](#)
- [Prison Policy Initiative](#)

Data on Wrongful Incarceration by Exoneration

- Nationwide Data
 - [National Registry of Exonerations](#)
 - 2821 exonerations since 1989, 25,265 years lost
 - [Interactive map](#), changes in the law mean more over time
- Louisville Cases
 - [Susan King](#)
 - [Johnetta Carr](#)
 - [Edwin Chandler, Keith West](#)
 - [Kerry Porter](#)
 - [Kentucky Innocence Project](#)

Data on Law Enforcement Overreach

- Police as a constant presence
- Police Surveillance and Technology
- Stop and Frisk by police policy
 - LEO policies have been ruled unconstitutional on race
 - The increase in stop and frisk is often disparate on race, and more white Americans are found with contraband
 - Judicial decisions are based on stop data

Race and Policing in the US

- Pew Research Center

- The majority of Americans believe that people are treated differently by the police based on race
- Black adults are 5x as likely to say they were stopped unfairly
- 2/3 of Black and 1/4 of white Americans say they have been treated as suspicious based on race
- Officers are more likely to view police-involved shootings as “isolated incidents” than are citizens
- 2/3 of officers believe demonstrations are out of anti-police bias and not a desire to hold police accountable

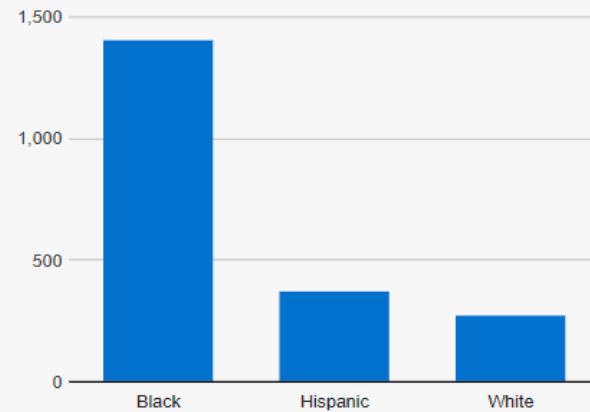
Data on Incarceration and Civil Rights

- The Color of Justice
- African Americans are incarcerated in state prisons at a rate that is 5.1 times the imprisonment of whites. In five states (Iowa, Minnesota, New Jersey, Vermont, and Wisconsin), the disparity is more than 10 to 1.
- In twelve states, more than half of the prison population is black: Alabama, Delaware, Georgia, Illinois, Louisiana, Maryland, Michigan, Mississippi, New Jersey, North Carolina, South Carolina, and Virginia. Maryland, whose prison population is 72% African American, tops the nation.
- In eleven states, at least 1 in 20 adult black males is in prison.
- In Oklahoma, the state with the highest overall black incarceration rate, 1 in 15 black males ages 18 and older is in prison.
- States exhibit substantial variation in the range of racial disparity, from a black/white ratio of 12.2:1 in New Jersey to 2.4:1 in Hawaii.
- Latinos are imprisoned at a rate that is 1.4 times the rate of whites. Hispanic/white ethnic disparities are particularly high in states such as Massachusetts (4.3:1), Connecticut (3.9:1), Pennsylvania (3.3:1), and New York (3.1:1).

Data on Incarceration and Civil Rights

- The Color of Justice

Figure 1. Average rate of incarceration by race and ethnicity, per 100,000 population



Data source: United States Department of Justice. Office of Justice Programs. Bureau of Justice Statistics. National Prisoner Statistics, 1978-2014. Bibliographic Citation: ICPSR36281-v1. Ann Arbor, MI: Inter-university Consortium for Political and Social Research [distributor], 2015-10-09; U.S. Census Bureau (2013). 2013 Population Estimates. Annual estimates of resident population by sex, race, and Hispanic origin for the United States, states and counties: April 1, 2010 to July 1, 2013. Washington, DC: U.S. Census Bureau.

Figure 1 provides a national view of the concentration of prisoners by race and ethnicity as a proportion of their representation in the state's overall general population, or the rate per 100,000 residents. Looking at the average state rates of incarceration, we see that overall blacks are incarcerated at a rate of 1,408 per 100,000 while whites are incarcerated at a rate of 275 per 100,000. This means that blacks are incarcerated at a rate that is 5.1 times that of whites. This national look also shows that Hispanics are held in state prisons at an average rate of 378 per 100,000, producing a disparity ratio of 1.4:1 compared to whites.

Data on Incarceration and Drugs

- Crack/Powder Sentencing guidelines
 - At one time were mandatory
 - Disparity was 100/1 in mandatory time served
 - The current disparity is 18/1; 28 grams v. 500 grams for a 5 year mandatory minimum
- Marijuana
 - Laws are rapidly changing
 - 6 million arrests between 2010 and 2018
 - Rates of usage are similar between Black and white Americans
 - Black Americans are still more likely to be arrested in every state, even where it is legal
 - 1.7x where legalized, 3.9x where illegal, have worsened in some places

Kentucky Data on Incarceration and Civil Rights

- [The Color of Justice](#)
- Kentucky data, incarceration rate per 100,000 people
 - White: 431
 - Black: 1411
 - Hispanic: 183
- State average data, incarceration rate per 100,000 people
 - White: 275
 - Black: 1408
 - Hispanic: 378

Data on Juvenile Incarceration

- The Sentencing Project
 - Juvenile incarceration overall has declined long term
 - Black children are more than four times more likely to be detained or committed than their white peers
 - Kentucky rates per 100,000
 - White: 89
 - Black: 393
 - Rate: 4.4, a reduction of 7% between 2015 and 2019

The Snowball Effect

- Inequity begets inequity
 - 80-90% of girls in the juvenile system are sexual assault victims
 - 1-4 foster children will have a system contact within 2 years
 - Incarceration is strongly correlated with illiteracy, poverty, mental illness and substance abuse
- Crime victims are also victims of an inequal system
- Center for American Progress report

Limitations on Local Power

- Many initiatives are statewide or nationwide
 - Sovereign Immunity, Laws protecting police (Kentucky's law that requires a 48 hour waiting period to question a police officer involved in a crime, no public statements, FOP lawyer present, KRS 15.520), and the statutory exclusion for jury service by felons are examples.
 - Others require cooperation with local law enforcement, the bar, the bench, corrections and other city agencies. Crisis intervention teams, law enforcement policy and training, judicial training and data collection.
 - [Spalding/UL Mental Health Initiative](#)

What has worked elsewhere

- Save Our Streets has reduced gun violence by 20%
 - Center for Court Innovation
- Coordinated local efforts on Diversion
- Center for Justice Research
- College educated police—less likely to use force, but more likely to arrest for less serious crimes if that's part of promotion
- Oregon Guide to Local Reform
 - Suggest cooperation between all local actors
 - “Power Mapping”

Local Reform with Other Agencies

- Justice Matters

- Multiple points for change in the local system
 - LEAD—87% reduction in incarceration, 39 fewer days in jail
 - Bexar County Diversion saves \$5 million in jail costs
 - Neighborhood courts staffed by community volunteers
 - Mesa County Pretrial Release changes
 - Court Date Reminder systems decrease FTA and costs
 - Case Management Strategies based on complexity
 - Mental Health Alternatives to Jail

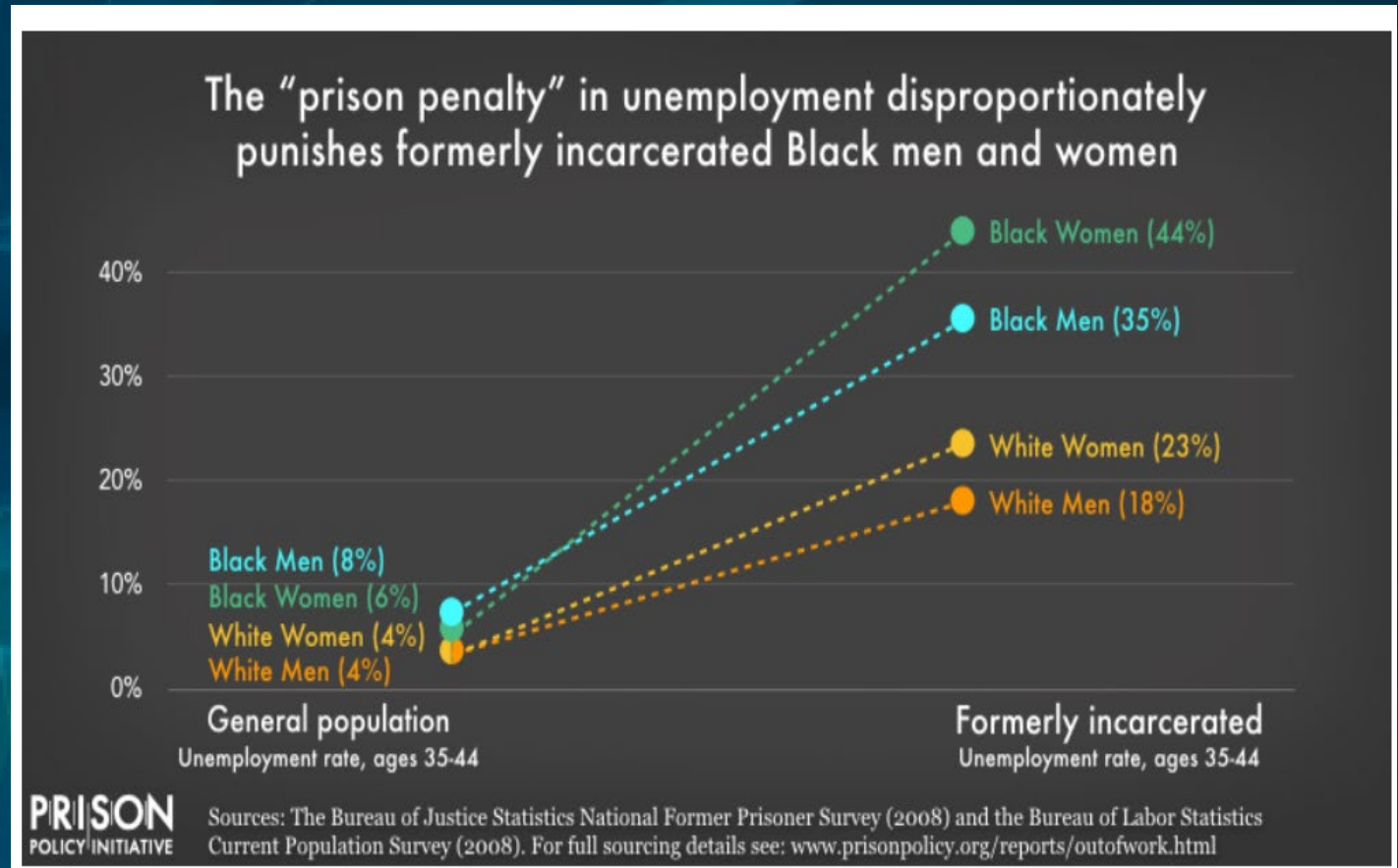
- Governing Institute

Louisville Options

- Ban-The-Box Ordinances
- Reexamining Cash Bail
- Expungement Resources
- Data collection
- Implicit Bias Training
 - Juries
 - Judges
 - Council

The Prison Penalty

Criminal Records
disproportionally affect Black
Americans



Ban-The-Box--Louisville

- Louisville's current ordinance
- https://www.nelp.org/wp-content/uploads/2015/03/Louisville_Ban_the_Box_Ordinance.pdf
- Since 2014, only applies to City hiring and “preferred” vendors
- Since 2014, changes in marijuana laws have been rapid and nationwide, yet this ordinance remains the same
- There is nationwide, bipartisan support for these ordinances

Ban-The-Box--Chicago

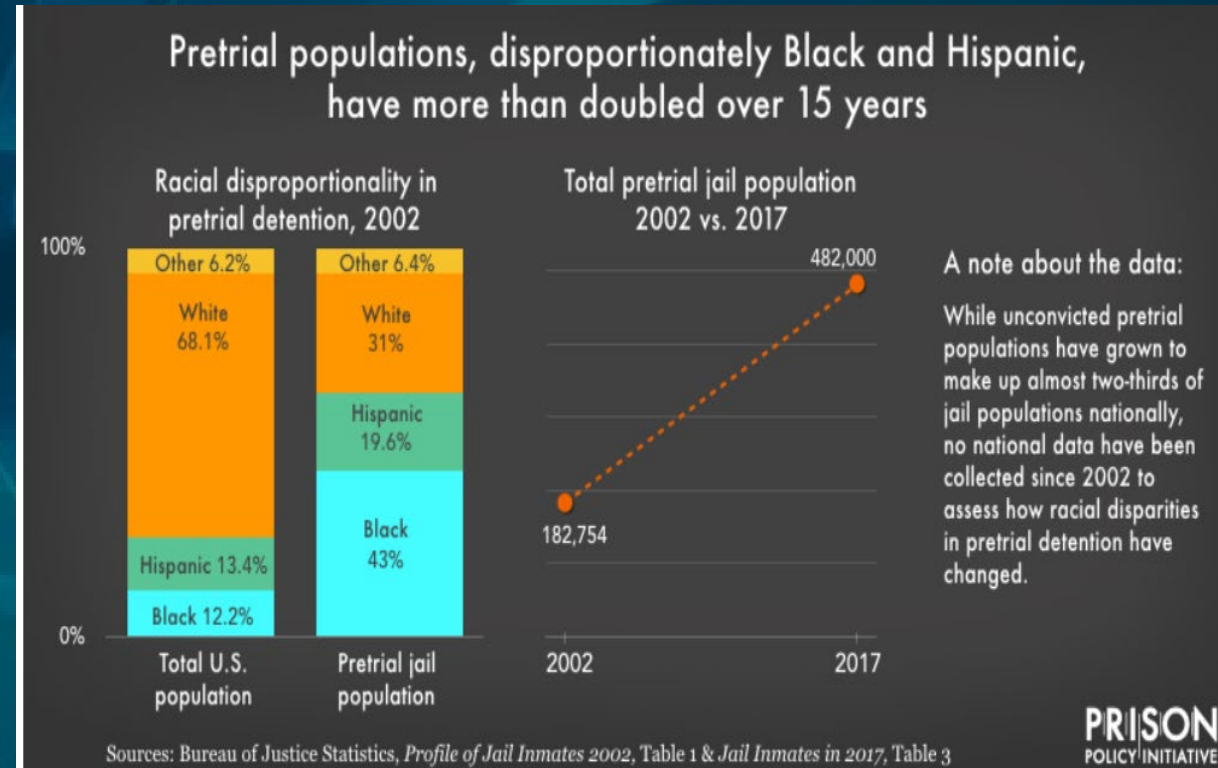
- Chicago's current ordinance
- Expanded the protection from what the state required
- State law applied Ban-The-Box to larger employers, Chicago's ordinance expanded that to any employers operating in the city
- Other municipalities have similarly expanded their ordinances
- Ban-The-Box laws by state

Cash Bail

- How Cash Bail works
- Upwards of 60% of people held in jail are there because they can't afford cash bail
- <https://www.courier-journal.com/story/opinion/2019/06/03/cash-bail-system-louisville-and-kentucky-travesty-poor/1276873001/>
- Louisville procedures on self-bond
 - Inmate must be a resident of Kentucky with a valid address in the system.
 - The bond is for cases in District Court only (No Circuit Court Cases).
 - No DUI Cases.
 - No Domestic Violence cases (EPO, DVO, Assault w/DV).
 - No booking fee balance with Louisville Metro Department of Corrections.

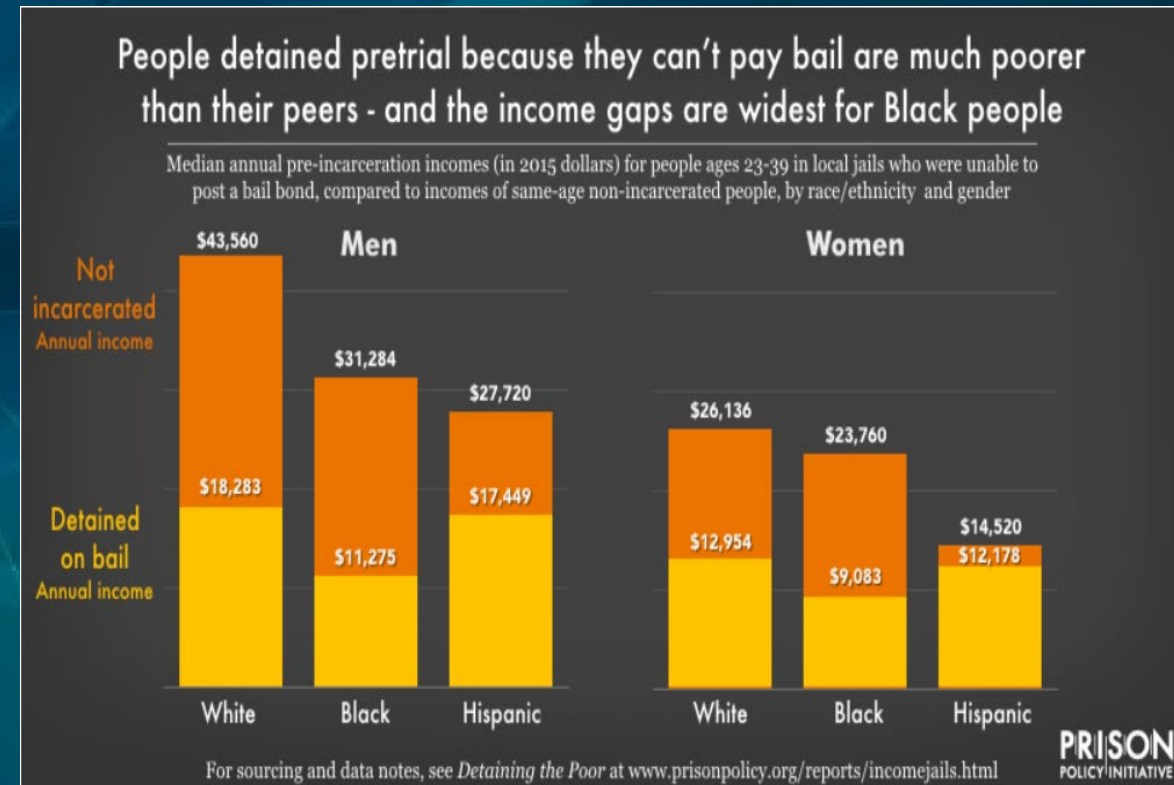
Cash Bail

- Inequities in Pretrial Confinement



Cash Bail

- Inequities based on poverty



Pretrial Services in Louisville

- Pursuant to Kentucky's [Administrative Release Program](#)
- Non-violent, non-sexual misdemeanors only
- Section 4 allows localities to deviate from the Schedule by adding non-violent Class D felonies
- Other options exist with cooperation from the bench
 - States like CA and IL are doing away with cash bail statewide
 - At the county level, reforms have happened through the judiciary
 - Preliminary data shows no increase in crime when bail reform was enacted, shows [cost savings](#)
 - [Interrogating Justice](#)

Expungement

- In Kentucky, an unlimited number of misdemeanors and most Class D felonies are expungable
- These criminal convictions affect not only jobs but jury service, which has been an issue in the local jury pool
- 5.2 Million Americans cannot vote due to felony convictions
- Jury disqualification with a felony conviction is statutory and non-waivable
- DPA does some outreach, but it has all been suspended
- Support for legal help and filing fees is an option
- Housing insecurity is also an issue

Data Collection: Why Data Matters

- Supreme Court Precedent
 - [McCleskey v. Kemp](#) (1987)
 - Petitioner must not only show disparate impact by race, but a discriminatory purpose
 - Data collection is an important check on sentencing
 - Data matters to other local agencies and voters and ultimately, to the State legislature

Limitations on Current Data Collection

- Uniform Crime Reports (FBI)
 - Based on reported crimes, uploaded by local law enforcement
- National Crime Victimization Survey (Census Bureau)
 - Based on responses to a nationwide survey, captures what responses are, based on estimates, not locally helpful
- The difference between them
- What does not get tracked
 - WaPo police shootings data (5000 since 2015) FBI recently started this through voluntary participation

Data Collection

- From the Prison Policy Initiative
- **Q: Where can I find data about racial disparities in my state's criminal justice system?**
- **A:** Unfortunately, the more specific you want to get with race/ethnicity data, the harder it is to find an answer, especially one that's up-to-date. State-level race and ethnicity data can be hard to find if you are looking to federal government sources like the Bureau of Justice Statistics (BJS). BJS does publish state-level race and ethnicity data in its annual *Prisoners* series, but only every 6-7 years in its *Jail Inmates* series (most recently the 2013 Census of Jails report). The Vera Institute of Justice has attempted to fill this gap with its Incarceration Trends project, by gathering additional data from individual states. Individual state Departments of Correction sometimes collect and/or publish more up-to-date and specific data; it's worth checking with your own state's agencies.

Data Collection

- From the Prison Policy Initiative
- **Q: How are the data collected, and how accurate are the data?**
- **A:** Finally, the validity of any data depends on how the data are collected in the first place. And in the case of criminal justice data, race and ethnicity are not always self-reported (which would be ideal). Police officers may report an individual's race based on their own perception – or not report it at all – and the surveys that report the number of incarcerated people on a given day rely on administrative data, which may not reflect how individuals identify their own race or ethnicity. This is why surveys of incarcerated people themselves are so important, such as the Survey of Inmates in Local Jails and the Survey of Prison Inmates, but those surveys are conducted much less frequently. In fact, it's been 18 years since the last Survey of Inmates in Local Jails, which we use to analyze pretrial jail populations, and 16 years since the last published data from the Survey of Inmates were collected.

Local Data Collection

- **Louisville Crime Reports**
 - Data on citations given include race
 - Data on police calls where an incident report was taken
 - This data only tracks events where calls were made or citations given, not on other police interactions with citizens

Local Data Collection Options-- Corrections

- **National Inmate Survey**
 - Latest data is a decade old
 - Designed to track sexual assault
 - Questionnaires are readily available online
 - Survey could be expanded and tailored to Louisville and the Council's specific interests
 - Data could be analyzed based on demographic characteristics of the incarcerated person, most of whom are pretrial and presumed innocent

Local Data Collection Options--Courts

- **National Archive of Criminal Justice Data**
 - National data is sparse and out of date
 - Older surveys could be used to create something specific to Louisville to track historical data, biases, etc.
 - Current and future data could be collected using a bubble sheet to be completed by court staff or attorneys
 - Tracking racial data in juries
 - Tracking data on race in pretrial services
 - Tracking data on bail amounts for defendants who do not qualify for pretrial services
 - All options track factors, race, charges, bail set and outcomes. One form could track everything after arrest

Use of Force Ordinance

- Data collection
 - Data Collection on Use of Force through the FBI
 - All voluntary, little response, all aggregate
 - Require local law enforcement to report all UOF incidents to Metro Government

Implicit Bias Training

- What is implicit bias?
 - Unconscious bias against members of a group
- Harvard Implicit Bias testing
 - Project Implicit, Outsmarting Human Minds
- Implicit bias affects risk factors in pretrial services, algorithms, bail, etc.,
- Some states are mandating implicit bias training
- Resources on judicial training
- The ABA urges such training for judges and lawyers
- Training to reduce implicit bias is effective

Implicit Bias in the Court

- Updated guidance on Implicit Bias from the [National Center for State Courts](#), March 2021
- [UConn School of Law](#) resources on Implicit Bias in courts
- Implicit Bias cannot yet serve as a way to challenge jury deliberations, but has been [studied](#) as impacting decisions
 - Could juror education on implicit bias be part of the process?
- [Sentencing Bias](#)
 - Judges generally control for bias in sentencing
 - Other decisions made throughout a trial might have different outcomes