



TRANSFORMING CRIMINAL AND CIVIL LEGAL SYSTEMS AND REEXAMINING PUBLIC AND PRIVATE POLICIES AND PRACTICES TO SUPPORT JUSTICE-INVOLVED FAMILIES

Criminal Legal System

One of the most ruinous barriers that keep fathers from BIPOC communities from being able to support the healthy development and well-being of their children and families is the American criminal legal system. The US [incarcerates more people](#), in both relative and absolute terms, than any nation in the world. Scholarship points to [shifts in law enforcement priorities and changes in sentencing policy](#) in response to racist fear mongering and the war on drugs — not to be confused with what the US Department of Justice now calls the opioid epidemic — as primary drivers.

Of the approximately 2.3 million Americans experiencing incarceration today, 67 percent are people of color. Data show that Black and Hispanic children were [7.5 and 2.3 times more likely](#), respectively, than white children to have a parent experiencing incarceration in 2007. In the same year, 40 percent of all parents experiencing incarceration were Black fathers.

As COVID-19 recovery imposes budgetary constraints on local and state governments, there is an opportunity to reexamine the economics of our criminal legal system to ensure maximum returns on public tax dollars. In 2017, The Center for Popular Democracy, Law for Black Lives, and Black Youth Project 100 reported that 12 major US cities and counties dedicated funding to incarceration, corrections, and policing at the expense of infrastructure, mental health services, housing and food assistance, and youth programs. These disparities were most pronounced in Black-majority cities where families experience higher rates of unemployment, underfunded schools, and less access to quality health care. According to [2017 Census data](#), local and state governments spent \$194 billion on policing and incarceration compared with \$100 billion on public health, \$52 billion on housing and community development, and \$40 billion on mental health services.

Civil Legal System

As American families have trended toward more dynamic, evolving, and equitable structures and arrangements over the last half century, our nation's family court system has not kept up. As the Industrial Revolution, laws, and customs pulled fathers' labor away from homes and left mothers singularly charged with domestic and caregiving

responsibilities, stereotypes of fathers as familial breadwinners and mothers as domestic caretakers and primary caregivers were born. Despite efforts from feminists and fathers' rights advocates to dispel these notions, they persist. We see their [harmful effects](#) when family court systems deny the capability and desire of fathers to actively and meaningfully contribute to their children's healthy development.

A [2014 analysis](#) of Wisconsin court records provides a snapshot of gender discrepancies in physical child custody cases following divorce. Between 1988 and 2008:

- Equal shared custody increased to 27 percent.
- Unequal shared custody increased to 18 percent, with more than 80 percent of cases placing children with mothers the majority of the time.
- Father-sole custody decreased to 9 percent.

Similar results have been found in studies of Illinois' family court system and nationally. The orientation of our nation's family court system toward antiquated gender roles undermines the role of fathers in children's healthy development.

THE OPPORTUNITY

Criminal Legal System

We know that in addition to absence, parental incarceration has emotional, physical, educational, and financial consequences for minor children and their families. [Research](#) has established links between parental incarceration and childhood depression, anxiety, antisocial behavior, worsened educational outcomes, and lower household income.

We also know that the effects of society's response to criminality - often bi-products of insufficient investments in health, education, and social safety nets - extend far beyond correctional facilities for individuals who experience incarceration. Barriers to self-sufficiency and family engagement associated with criminality [include](#) obstacles to securing employment, housing, financial supports like food stamps and Temporary Assistance for Needy Families (TANF), voting, family reunification, and several fines and fees.

Following are a handful of [trends](#) about fatherhood in America that underscore the urgency for our systems and structures, programs, and policies to support their roles as parents.

- More dads are staying home to care for their children.
Fathers accounted for 17 percent of all stay-at-home parents in 2016, with 24 percent of stay-at-home dads reporting that caring for family was the main reason they did not work outside the home.
- Fathers see parenting as central to their identity and a positive experience.
Pew Research Center found dads to be just as likely as moms (57 percent of fathers and 58 percent of mothers) to say parenting is extremely important to their identities. Fifty-four percent of fathers and 52 percent of mothers considered parenting to be rewarding all of the time.
- Fathers are much more involved in child care than they were 50 years ago.
In 2016, fathers reported spending an average of eight hours per week on child care — more than triple the amount of time spent in 1965. Fathers also reported spending an average of 10 hours per week on housework — more than double the amount of time spent in 1965.

Civil Legal System

Legal representation helps parties navigate complexities of the civil legal system and exercise important legal rights in civil proceedings. A number of states have statutes that [guarantee a right to counsel](#) for child custody, support, and visitation cases. [Civil legal aid](#) is free legal assistance to individuals and families with low incomes navigating the civil legal system. Examples include legal assistance and representation, help centers, and user-friendly information-sharing tools. There are legislative opportunities to guarantee counsel to caregivers in family law proceedings and to ensure access to civil legal aid for fathers and families with low incomes. Ensuring access to legal representation and assistance improves outcomes for children and families and improves the efficiency of the civil legal system.

At the same time, public and private sectors have an opportunity to reexamine policies and practices to support justice-involved individuals' roles as parents and caregivers.

THE EXAMPLE

Criminal Legal System

[Michigan Clean Slate Legislation](#)

In the fall of 2020, Michigan Governor Gretchen Whitmer signed the most expansive automated record clearance bill in the US. Criminal record clearance strengthens families, communities, and state economies by removing barriers to employment, education, and housing associated with criminality for justice-involved individuals. Michigan House Bills 4980-4985 and 512):

- Create an automated process for setting aside eligible misdemeanors after seven years and eligible non-assaultive felonies after 10 years.
- Expand the number and revise the types of felonies and misdemeanors eligible to be set aside by application.
- Revise waiting periods before one is eligible to apply for clearance.
- Treat multiple felony or misdemeanor offenses from the same transaction as a single conviction, provided the offenses happened within 24 hours of one another, are not assaultive crimes or involve possession or use of a dangerous weapon, or are crimes that carry penalties of 10 or more sentences.
- Expand expungement eligibility to several traffic offenses.
- Allow individuals to petition to set aside one or more marijuana offenses if the offense would not have been a crime if committed after adult use of recreational marijuana was legalized in the state.

While these new laws become effective April 11, 2021, judicial and law enforcement authorities are granted two years to secure funding and coordinate plans to implement automation of clearance processes.

[Ban the Box](#)

In 2004, the Ban the Box campaign emerged to remove barriers to reentry based on job and housing discrimination. Put simply, the campaign asks entities to make decisions on candidates based on skills and

qualifications, not prior criminal legal system involvement. Over 45 cities and counties (including New York City, Boston, Philadelphia, Atlanta, Chicago, Detroit, Seattle, and San Francisco) have removed the question regarding conviction history from employment applications. Seven states (Hawai'i, California, Colorado, New Mexico, Minnesota, Massachusetts, and Connecticut) have updated public hiring practices to reduce discrimination based on criminal legal system involvement.

The Equal Employment Opportunity Commission updated the *Enforcement Guidance on Consideration of Arrest or Conviction Records in Employment Decisions* to clarify and strengthen federal policies in 2012.

Alternatives to Incarceration

Between 1988 and 2009, state spending on corrections increased from \$12 billion to more than \$50 billion annually. But increased expenditures did not mean increased effectiveness. Among individuals with substance use disorders experiencing incarceration in state prisons, 53 percent had at least three prior sentences.

There is a better way. Problems like behavioral health, substance use disorders, and homelessness are more appropriately addressed outside the criminal legal system. Treatment and affordable housing contribute more effectively to family and community well-being and save states money.

States are embracing cheaper, more effective options for individuals with substance use disorders. Programs in several states are demonstrating that incarceration is not necessary to cure addiction. As bipartisan criminal legal system reform gains momentum, it is important to set a clear vision of what should replace mass incarceration to avoid the trap of [mass control, surveillance, and monitoring](#) of BIPOC communities.

Problem-solving courts are another cost-effective alternative to incarceration for individuals with substance use and behavioral health disorders. Drug courts typically combine intensive treatment with incentives and random drug tests for a minimum of one year with completion resulting in dismissal of charges, reduced or vacated sentences, or lesser penalties. In 2011, roughly 120,000 Americans received treatment through 2,600 drug courts across the US with significant positive results.

- Drug court participants had 16 percent fewer arrests than criminal legal system-involved individuals not enrolled in drug courts.
- Twenty-six percent fewer drug court participants reported drug use and were 37 percent less likely to test positive for illicit substances.
- Drug courts provided \$2.21 in direct benefits to the criminal legal system for every \$1 invested — benefits increased to \$3.36 for what the research identified as individuals at high risk.

Finding Alternatives to Mass Incarceration: Lives Improved by Ending Separation Act (FAMILIES Act)

In November 2020, US Senator Ron Wyden (D-OR) and US Representative Pramila Jayapal (D-WA) introduced legislation to create an alternative to incarceration for parents and caregivers and provide them with resources to keep children out of the foster care system. The FAMILIES Act would allow federal judges to divert parents and caregivers from incarceration and into comprehensive programming to address the unmet needs that led to their interactions with the criminal legal system. FAMILIES Act diversion programming would include education, employment, parent skills, mental health, and substance use disorder services. The legislation would also connect caregivers to public benefits like health care and housing assistance to support whole families. Eligibility guidelines require caregivers to be at least one of the following:

- Pregnant

- A parent of a minor child
- A caregiver for a minor child or other minor relative
- A caregiver for an individual with disabilities
- A caregiver for an elderly family member

In their decision-making processes, courts will be asked to weigh individuals' parental or caregiving responsibilities, history of criminal legal system involvement, family safety, and family impact statement describing the expected impact of incarceration on the family unit. The legislation includes a provision for training judges on trauma-informed decision-making, domestic violence, child abuse and neglect, substance use disorder and addiction, and mental health.

[Toolkit for Developing Family-Focused Jail Programs](#)

In 2015, the Urban Institute partnered with the National Institute of Corrections to identify promising practices in the development of family-centered approaches to incarceration. In San Francisco, California, and Allegheny County, Pennsylvania, programs were developed to nurture parent-child relationships during terms of parental incarceration. Both programs offered a suite of services that included parenting classes and contact visits. Analysis of both programs surfaced key considerations for developing programming to support families experiencing incarceration.

■ Identify Goals

Clearly defined goals make program design easier. Some of the goals identified in the San Francisco and Allegheny County examples include:

- Strengthen bonds between caregivers and children
- Ensure children benefit from parent-child interactions
- Support caregivers to make parenting decisions

■ Ensure a Collaborative Process

In many cases, the criminal legal system and its manifestations are not designed to support families. For correctional facilities to offer the suite of needed services, collaboration with partners better equipped to meet families' needs is often necessary. In Allegheny County, the Family Support Program was built on existing collaborative efforts between county offices of probation and health and human services, program providers, and jail administrators. San Francisco's One Family program was a collaborative effort between government agencies and community-based organizations linked by the San Francisco Children of Incarcerated Parents Partnership. Best practices to ensure effective collaboration include:

- Clarifying roles
- Building trust
- Thinking broadly about partners in context of goals
- Co-creation
- Centering families

■ Determine Core Programmatic Offerings

Identified goals and partners should inform what components to include in programming. The One Family and Family Support programs share the following components:

- Parenting classes
- Contact visits
- Relationship classes

- Family circles
- Implementation

With goals, partners, and components established, institutions can prepare for implementation. Plans for implementation should consider:

 - Program structure and sequence
 - Eligibility criteria
 - Capacity
 - Staff training

Congress Votes to Lift Ban on Pell Grants for People in Prison

A measure lifting the 26-year-old ban on Pell Grants for individuals experiencing incarceration was in Congress' 2020 omnibus end-of-year package. The longstanding ban has denied those experiencing incarceration access to postsecondary education since passage of the Violent Crime Control and Law Enforcement Act of 1994. We encourage states and postsecondary institutions committed to equity to take full advantage of this opportunity by ensuring broad access to postsecondary programs for individuals experiencing incarceration.

In 2019, the [Vera Institute of Justice](#) explored how lifting the current ban awarding Pell Grants to individuals experiencing incarceration would benefit families, employers, and states. The findings are clear: access to postsecondary education for persons experiencing incarceration unleashes prosperity for individuals and families, strengthens the workforce, and save states money.

Vera's report highlights the following findings and projections:

- Most people experiencing incarceration are eligible for but denied postsecondary education. *Sixty-four percent of people experiencing incarceration in state and federal prisons are academically eligible to enroll in postsecondary education programs. But in 2014, only 9 percent of people completed a postsecondary program while in prison. Most postsecondary programs offered in prisons are funded through the federal Second Chance Pell program, which serves a maximum of 12,000 students annually. Vera estimates that roughly 463,000 individuals experiencing incarceration would be eligible for Pell Grants.*
- Postsecondary education in prison increases employment and earnings. *Vera estimates that states will see an average employment rate increase of almost 10 percent among returning citizens as a result of lifting the ban on Pell Grants. If half of the eligible population participated in postsecondary programs, researchers estimate a 2 percent increase in employment rates among returning citizens in the first year following incarceration. As a result, combined wages earned by returning citizens could increase by \$43 million in the first year after release.*
- Postsecondary education provides in-demand skills. *The Bureau of Labor Statistics projects nearly 5 million job openings annually for which at least some college will be a requirement.*
- Educational opportunities reduce state spending. *Authors estimate that states would decrease incarceration costs by a combined \$365 million annually if half of the eligible population participated in postsecondary programs. A 2018 Rand Corporation analysis found participation in postsecondary education programs reduced odds of recidivating by 48 percent.*

Confronting Criminal Justice Debt

A 2016 Criminal Justice Policy Program (CJPP) at Harvard Law School report outlines state and municipal policy options to reduce the disproportionately harsh burdens that criminal legal system fines and fees place on families with low incomes. Legislative options highlighted in CJPP's analysis include:

Abandon Reliance on Poverty Penalties

Poverty penalties punish people with low income more severely than wealthier counterparts for the same infraction as a direct consequence of having a low income. Examples of poverty penalties include late fees, interest charges, fees to enter installment plans, fines or jailing for contempt of court, and imposition or extension of probation for nonpayment of debt. States should consider policies that:

- Require courts to conduct ability to pay assessments (that consider all court-ordered obligations for which an individual is responsible) before levying penalties for nonpayment
- Prohibit imposition of additional interest or other costs for payment plans when people are unable to pay the full amount owed
- Eliminate interest, late, and collection agency referral fees and penalties incurred during periods of incarceration
- Allow individuals to obtain hardship deferments during periods of financial hardship

End Use of Collection Mechanisms That Act as Poverty Traps

Policies that go beyond punishing people with low incomes more severely to further inhibiting one's ability to earn income or meet basic needs and responsibilities trap families in poverty. Examples include driver's or professional license suspension, denial of public benefits based on nonpayment of debt, and linking probation terms to debt collection. These counterproductive approaches carry destabilizing consequences that push families deeper into poverty.

Encourage Fair Collection Practices

Options for states to encourage fair and productive collection practices include:

- Capping the share of income collected — policy experts suggest a tipping point where the amount of debt collections undermines individuals' well-being, leading to nonpayment.
- Creating statutes of limitation for debt collection — enforcement of un-administrable fines should be avoided whenever possible. The city of Philadelphia ended a campaign to collect court debt issued prior to 2010 after advocates demonstrated unreliable records and overwhelming inability to pay. In the federal criminal legal system, outstanding fines are waived 20 years after imposition, and special assessment fees expire if unpaid after five years.

De-link Debt and Reentry

Legislatures should reduce collateral consequences of fines and fees associated with criminality. Parole supervision fees and repayment of incarceration costs are unlikely to provide states with substantial revenue but are a barrier to entry for returning citizens. States should consider the following policies to de-link debt from reentry:

- De-link Payment from Expungement. Some states require full payment of court-issued debt for expungement. In others, expungement fees prevent people from restricting criminal records. With implications for employment, housing, and educational opportunities — linking expungement to wealth exacerbates inequities.

- De-link Payment from Voting Rights. On the heels of an election that saw more Americans vote than at any time in more than a century, states have an obligation to amend laws that disenfranchise people who owe criminal legal system debt.

Civil Legal System

Civil Access to Justice Act of 2009

In 2009, then-Senator Tom Harkin (D-IA) introduced the Civil Access to Justice Act to improve access to civil legal aid. The act would have removed restrictions on civil legal aid lawyers' authority to help clients, increased funding for civil legal aid programming, and expanded law schools' authority to provide legal assistance. The legislation included a provision to almost double funding to the Legal Services Corporation — the independent nonprofit established by Congress in 1974 to provide financial support for civil legal aid to Americans with low incomes — from \$390 million to \$750 million annually. This funding increase would have allowed programs to expand access to services beyond the then-20 percent ceiling of community need met.

American Family Law Center

Texas' American Family Law Center helps children and families with low incomes navigate family law proceedings involving child support, divorce, and parental rights. The center's mission is rooted in the belief that children should have nurturing relationships with both parents and in the fact that when children are parented safely and lovingly by both parents, society and communities benefit.

American Family Law Center's free services include:

- Educational materials for caregivers
- Access to state agency publications
- Referrals to parenting programs
- Programs and resources for caregivers experiencing incarceration