

REENGAGING THE JEWISH COMMUNITY IN CIVIL RIGHTS



JCPA | JEWISH COUNCIL
FOR PUBLIC AFFAIRS

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DID YOU KNOW?

With just **4.4%** of the world's population, the U.S. houses roughly **25%** of the world's prisoners—over **2.2 million** individuals.

1 in every **15** black men and **1** in every **36** Latino men is incarcerated, compared with **1** in every **106** white men.

Over **2.7 million** children have at least **one** parent in prison.

Nearly **half** of all state prisoners are nonviolent offenders and **16%** are drug offenders.

Despite similar levels of usage, **2/3** of drug offenders are **black** and **Latino**—that is roughly **10X** the rate of **white** users.

INTRODUCTION

The inequities people of color suffer at the hands of the justice system constitute one of the most pressing civil rights crises the United States faces today. Regardless of intent, racial disparities are an undeniable, tragic, and ultimately unacceptable reality of our criminal justice system.

More than 30 years ago, the United States launched a “War on Drugs” that produced “tough on crime” policies and harsh mandatory minimum sentences that have lengthened prison terms across the board. As a result, our prison population has skyrocketed, disproportionately impacting people of color. Recent shootings of unarmed black and Latino men and women since the murder of Trayvon Martin in 2012 serve as a striking reminder that racism and discrimination still plague our society and that the dream of the civil rights era remains deferred.

The Jewish community has a strong record of serving on the front lines of civil rights efforts in America, and we can once again. The Jewish community understands from its own history the destructiveness of being marked for unfair treatment based on ethnicity, religion, and race. JCPA's *Criminal Justice 101* is a user-friendly policy overview that aims to provide a background on the issues criminal justice reform seeks to address so that the Jewish community relations field can increase its involvement in working for transforma-

tive change. It is time that we return our attention, and that of our local communities, to this problem and take serious steps toward creating a more just and equitable society.

Criminal justice is a broad term that covers an array of issues. For clarity, this overview divides these issues chronologically into before, during, and after incarceration, including:

- School-to Prison Pipeline and Juvenile Justice
- Law Enforcement and Police Encounters
- Judicial Proceedings
- Incarceration
- Reentry and Collateral Consequences

SCHOOL-TO-PRISON PIPELINE AND JUVENILE JUSTICE

The “school-to-prison pipeline” refers to the widespread trend of schools adopting “zero tolerance” disciplinary practices—out-of-school suspensions, expulsions, and arrests—that drive students from the education system into the juvenile justice system. Almost **70%** of inmates never graduated high school.¹

Over the past several decades, pre-schools through high schools across the nation embraced disciplinary models that mandate harsh punishments even for low-level misbehavior. Minor offenses, such as dress code or cell phone violations, profanity, and “talking back,” which once merited a visit to the principal’s office, are now cause for out-of-school suspension, expulsion, and in-school arrests.²

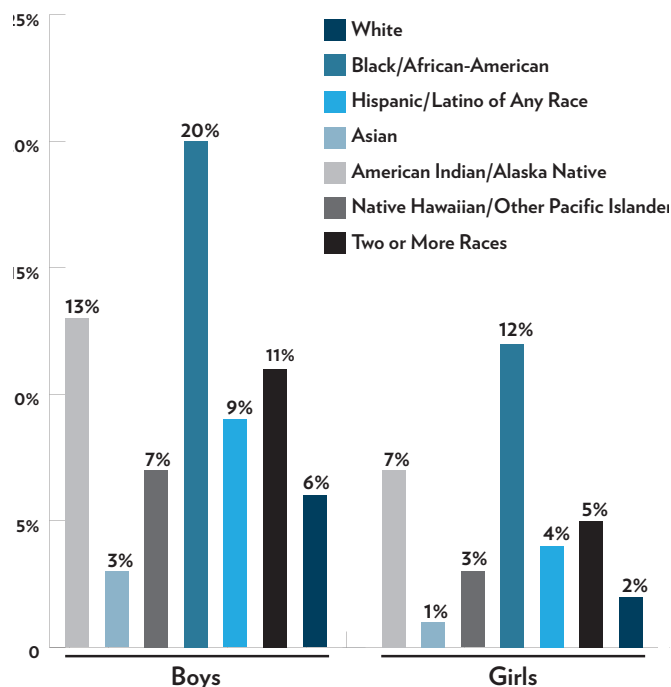
Further compounding the problem, overcrowded, underfunded schools are increasingly relying on campus cops, known as Student Resource Officers, to handle routine discipline. According to the Justice Policy Institute, schools with Student Resource Officers were **5X** more likely to arrest students for discretionary offenses like “disorderly conduct” or “insubordination” than those without police.³ As one chief judge told Congress in 2012, instead of addressing serious crimes, the juvenile justice system must now expend its resources on “prosecuting kids that are not ‘scary,’ but made an adult mad.”⁴ Over **70%** of students subjected to discretionary arrest are black or Latino.⁵

“(R)elying on out-of-school suspensions, expulsions and arrests to handle routine matters of discipline is not only proven to harm students’ academic outcomes, but it’s not even proven to make our schools safer.”

—Matt Cregor, NAACP Legal Defense and Educational Fund

Such punitive measures, most of which are “discretionary,” disproportionately impact students of color, LGBTQ students, and students with disabilities—many of whom are already impoverished, abused, and/or neglected at home. Federal data shows that black students

Students Receiving Out-of-School Suspensions by Race/Ethnicity and Gender



Source: U.S. Department of Education, Office of Civil Rights, Civil Rights Data Collection, 2011-12. Data Compiled by the Justice Policy Institute

are **3X** as likely to face suspension or expulsion as their white classmates, despite numerous studies that indicate no behavioral differences.⁶ Research has largely dispelled the common notion that these disparities stem from issues of poverty and more misbehavior among students of color.⁷

A groundbreaking Texas study found that just **one** out-of-school suspension **doubled** a student’s risk of dropping out and **23%** of students who were suspended ended up in contact with the juvenile justice system. Of most concern, the study also found that black students were **31%** more likely to receive a discretionary suspension, even after controlling for variables like the school’s demographics and regional attributes, age, socio-economic status, and English language proficiency.^{8 9}

LAW ENFORCEMENT AND POLICE ENCOUNTERS

Animosity between law enforcement and communities of color has reached crisis levels. Police shootings have justifiably captured public attention and reignited a national conversation about how we police society. Excessive force used by officers in *routine interactions* with black and Latino citizens is one of the most ubiquitous, and damaging forms of discrimination.

Police officers face a difficult, demanding, and sometimes dangerous job, and deserve recognition and respect. Increasingly, officers have found themselves responsible for handling situations that call for mental health professionals, social workers, or educators.

Experts widely agree, and mounting data strongly suggest, that the criminal justice system, including police work, suffers from institutionalized racism that traumatizes both police and citizens of color. **Institutional racism** “refers to the policies and practices within and across institutions that, intentionally or not, produce outcomes that chronically favor, or put a racial group at a disadvantage.”^{10 11} **Implicit bias**, which nearly everyone holds to some degree, also significantly contributes to racial and ethnic disparities in police stops, arrests, prosecutions, and punishment.

Take a few minutes to test your implicit bias at <http://bit.ly/1m808ph>

OVER-POLICING

A new study by prominent Harvard economist Roland G. Fryer Jr. confirms that police are more likely to touch, handcuff, push to the ground, or pepper-spray black men and women, even after controlling for how, when, and where they encounter the officers.¹² Given that police are far more likely to stop people of color, a significant portion of this population have directly experienced or know someone who experienced police harassment.

In one small Florida town, “stop and frisk” quotas led police to stop 56,922 people, more than half the population, over five years. News broke after *Miami Herald* reporters discovered that police had stopped one black man 258 times, including 62 times for loitering

Police Officers Are More Likely To...

	with blacks	than with whites	
	2,165 for every 10,000 stops in New York City	1,845 for every 10,000 stops in New York City	17% more likely
use hands			
push into wall	623	529	18%
use handcuffs (excludes arrests)	310	266	16%
draw weapons	155	129	19%
push to ground	136	114	18%
point weapon	54	43	24%
use pepper spray or baton	5	4	25%

Source: The New York Times, 2016

or trespassing while at the convenience store where he worked.^{13 14}

People of color also experience a subtler form of institutional racism through cities’ use of municipal fines from traffic tickets and other minor infractions to raise revenue. Though ostensibly neutral, it is poor, mostly minority populations who bear the brunt of the financial burden.¹⁵ Many cities even arrest people who are unable to pay their fines, detaining them in overcrowded jails, sometimes for weeks—perversely often at a cost to taxpayers that far exceeds the amount owed.¹⁶ In a true catch-22, some residents have their driver’s license suspended, costing them jobs they need to pay off their fines. Nearly all of those caught up in the system for failure to pay are black or Latino, disabled, and/or homeless.

When the Justice Department investigated Ferguson’s police department after Michael Brown’s death, it found that officers disproportionately ticketed and arrested

black citizens, viewing them “less as constituents to be protected than as potential offenders and sources of revenue.” In fact, promotions depended on officers’ ability to generate revenue.¹⁷ The *Washington Post* reports that some cities rely on fines for minor offenses like playing loud music, leaving grass uncut, and wearing ‘saggy pants’ to make up more than **40%** of their annual budgets.^{18 19}

UNDER-POLICING

Conversely, black communities are also severely under-policed when it comes to violent crime, forcing residents to carry out their own policing, often through violence.²⁰ For many, being black or Latino means living in a community, such as in New York City, where police solve **86%** of homicides involving white victims, while **55%** of homicides involving a black victim are left unsolved.²¹ The incongruity is largely a result of mistrust between police and communities of color, as well as “**broken windows policing**,” which criminalized nuisance behaviors. Yet, according to researchers, it is also a matter of police priorities. One criminologist points out that police almost always solve homicides of fellow officers, even though these murders are often the most difficult to solve.²²

You can look up the percentage of crimes your local law enforcement solve using this database from National Public Radio at <http://n.pr/1Nz1HfF>

With high arrest rates for minor offenses disproportionate to that of white people for the same crimes, and low arrest rates for serious violent crime, trust in police among communities of color has deteriorated such that citizens in those communities do not feel safe encountering or turning to police.

POLICE MILITARIZATION

Police militarization made national headlines in 2015, during the protests in Ferguson following Michael Brown’s fatal shooting, but the Department of Defense program that makes it possible today started in 1997. The **1033 program** allows the Defense Department to share its surplus equipment with state and local police forces. This program has given rise to police outfitted with mine-resistant armored tanks, grenade launchers, and assault rifles they have little to no training in using.

Equipping law enforcement with military gear has profound psychological impacts both on citizens and the officers themselves. It sends the message that law enforcement is “at war” with the communities they are charged with protecting. It terrifies citizens and automatically escalates already tense and hostile situations that in no way require military use of force. The number of SWAT teams, initially established to respond to active shooter and hostage situations, has proliferated across the country. Not surprisingly, the majority of SWAT deployments—**over 80%** in some regions—are now for “no-knock” drug raids, where police storm homes, often in the middle of the night, to search for drugs.²³



Police in riot gear confront a man in Ferguson, Missouri, on August 11, 2014. (Jeff Roberson/AP)

JUDICIAL PROCEEDINGS

Justice in America is too often delayed or denied. Court dockets are overloaded, the public defender system is underfunded, and racial disparities permeate the system. Access to competent counsel is both constitutionally-mandated and essential to prevent miscarriages of justice. The inadequacy of the current system results too often in justice delayed and denied, as when the outcomes of criminal proceedings hinge arbitrarily on a defendant's finances.

PUBLIC DEFENDERS

According to the Brennan Center for Justice, anywhere from **60-90%** of criminal defendants need publicly-funded counsel.²⁴ Yet public defenders are so under-resourced and overworked, in some jurisdictions, they can only devote an average of **seven minutes** to each case—handling some **350-1,000** cases annually, which means they cannot possibly be an effective advocate.²⁵ And in fact, many urge their clients to accept plea deals, even when the client insists on their innocence. In at least 43 states and the District of Columbia, courts can bill defendants for their public defender.²⁶

Almost all criminal cases end in a plea deal, that is, before the case is tried. It is not uncommon for impoverished defendants—even those who are innocent—to agree to plead guilty, rather than sit in jail and await trial, because they cannot afford to wait in jail for the trial date, nor can they afford bail. Agreeing to a suspended sentence or probation may meet their immediate needs, but the long-term outcome is grim: they now have a criminal record, which renders them ineligible for many jobs and most public assistance.²⁷

Three out of five people in jail are legally presumed innocent, awaiting trial or resolution of their cases through plea negotiation, and simply too poor to post even low bail.



Source: Ram Subramanian et. al. *Incarceration's Front Door: The Misuse of Jails in America*. New York, NY: Vera Institute of Justice, 2015

Being incarcerated, even for a short time, can be devastating, resulting in the loss of a job, child custody, and even housing. Over **62%** of people in jail have not yet faced trial or been found guilty. A **third** are detained simply due to their inability to make bail.

Find out what court fees your state charges using this helpful tool created by National Public Radio at <http://n.pr/1o1RDSp>

INDIGENT DEFENSE AND BAIL

That is why so many **indigent**²⁸—impoverished—defendants turn to predatory bail bondsman, who agree to pay the court should the defendant fail to appear in court. In exchange, the defendant must pay 10-15% of the bail amount to the bondsmen up front, even if the defendant is found not guilty or the charges are dropped.²⁹ But even bondsmen typically refuse to front bails set lower than \$2,000, which is higher than most bails.³⁰ Our system punishes low-income people before they are even proven guilty.

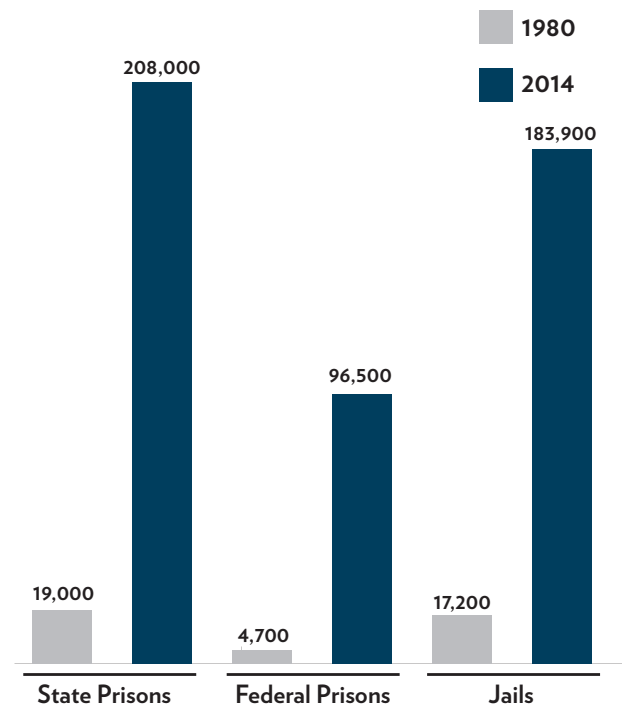
MANDATORY MINIMUM SENTENCES

“If he had been an aircraft hijacker, he would have gotten 24 years in prison. If he’d been a terrorist, he would have gotten 20 years in prison. If he was a child rapist, he would have gotten 11 years in prison. And now I’m supposed to give him a 55-year sentence? I mean, that’s just not right.”

—Retired Federal Judge Paul Cassell on sentencing 24-year-old Weldon Angelos to **55 years** for three marijuana sales

More than 30 years ago, the United States launched a “War on Drugs” that produced “tough on crime” policies and **mandatory minimum sentences** that have lengthened prison terms across the board. About half of all arrests are drug-related, and the majority of these are for personal use or simple possession. As a result, our prison population has skyrocketed. Long sentences and mandatory incarceration for minor drug offenses have not deterred drug use or reduced addiction rates.

Number of People in Prisons and Jails for Drug Offenses, 1980 and 2014



Source: The Sentencing Project

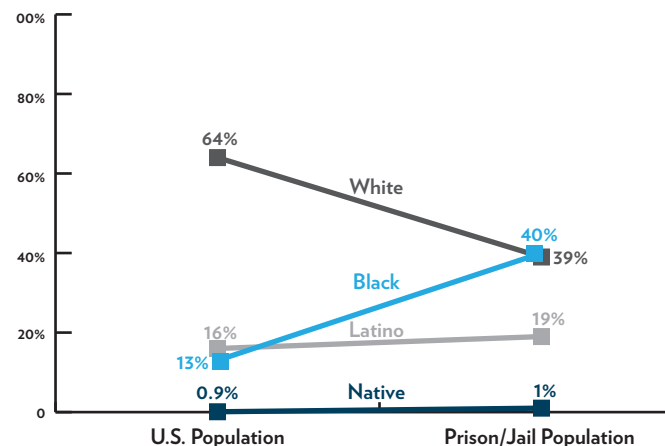
Studies suggest that the disproportionate percentage of people of color enmeshed in the criminal justice process reflects disparities in police enforcement of criminal laws, rather than any difference in the rates at which whites and minorities commit crimes. For example, despite similar or higher usage rates among whites, drug arrests and prosecutions fall disproportionately on African-Americans and Latinos, who are also more likely to be convicted and sentenced to longer terms than white defendants. Mandatory minimums for drug offenses also drove harsher sentences for other crimes, as well. Once a drug offense merits a 10-year sentence, more serious crimes require longer terms to keep pace.

INCARCERATION

Incarceration has increased more than **500%** over the last 40 years.³¹ As a nation, we spend more on prisons and jails each year than the entire budget of the Department of Education—**\$80 billion** annually to lock up over **2.2 million** people. According to the Bureau of Justice Statistics, state prisons house more than **86%** of the nation's inmates. Just under half are there for nonviolent offenses.³²

Find out your state's imprisonment rate using The Sentencing Project's interactive map at <http://bit.ly/2bdB3fo>

Racial and Ethnic Disparities in Prisons and Jails



Source: Prison Policy Initiative; compiled from 2010 Census, Summary File 1.

The incarceration system has all but abandoned rehabilitation in favor of retribution. Prison conditions, including severe overcrowding and pervasive sexual violence, can impose hardships and dire consequences more egregious than those imposed by our laws. These conditions dehumanize both inmates and prison guards, making the environment even more dangerous and volatile.

Over the years, as incarceration rates exploded and pressure to cut prison costs mounted, many facilities significantly increased their inmate-to-staff ratio, meaning each guard is responsible for a growing number of inmates, which is correlated with higher levels of violence among inmates.³³



Several hundred inmates crowding the gymnasium at California's San Quentin prison in 2009. (Eric Risberg/AP)

MENTAL HEALTH

Prisons have become *de facto* mental health facilities. Research shows that many, if not most, perpetrators are also victims of crime. There are a variety of explanations for the overlap between victims and offenders that range from societal to psychological. Breaking the cycle of victimization and criminalization requires robust mental health services that few facilities offer.³⁴ Inmates are not the only ones who suffer within prison walls. Corrections officers report high rates of Post-Traumatic Stress Disorder (PTSD) and incidents of suicide. One study of U.S. corrections officers found that they suffer PTSD at more than double the rate of military veterans. The consequences may be far-reaching. A number of current and former officers admitted to taking out the stress and anxiety of the job on inmates.³⁵ Yet mental health care and counseling services are virtually nonexistent.

SOLITARY CONFINEMENT

Adding to the psychological trauma that incarceration can impose is the controversial use of solitary confinement as a prison management tool. Also known as "restrictive housing," "the SHU,"³⁶ "segregation," "the box" or "the hole," solitary confinement involves isolating a person in a cell for 22-24 hours a day with virtually no human contact. This tactic is used for punitive, disciplinary, and "protective" reasons and can last anywhere from a few days to decades. Disciplinary segregation is typically used in response to violations of prison rules, while "involuntary protective custody" is common for at-risk prisoners, such as minors held in adult prisons, LGBTQ people, and mentally-ill individuals.³⁷

Military, criminal, and psychiatric experts almost universally agree that isolation causes insanity. Even just a few days in isolation can leave permanent damage. In 2011, the United Nations Special Rapporteur on Torture, Juan Méndez, called for an international ban on solitary confinement, arguing that the practice could amount to torture.³⁸ Though solitary confinement for juveniles was recently banned in federal facilities, many states still engage in this practice. Almost all allow it for adults.



Solitary confinement cells are typically about eight by ten feet.

Mass arrests and incarceration remove large numbers of people from engaging productively in their communities, significantly contributing to poverty, income inequality, and family instability. For every person incarcerated, there is also a network of family, friends, and community members who must endure the consequences of that person's absence.

In addition to losing the incarcerated person's income, exorbitant phone call rates, travel costs for visits, and legal fees also place additional financial strain on families. Through it all, children suffer the most.³⁹

"Incarceration is a curse on my family. It sucked up and spat out my brother and father and friends. It permeates my earliest memories. It shaped my worldview, informed my awareness of the system, and plagued my youth with knowing."

—Dominique Matti, freelance writer and editor, *Vox*

REENTRY AND COLLATERAL CONSEQUENCES

Returning citizens, the preferred term for inmates released from prison, must navigate a complex set of barriers that make resuming any semblance of a “normal” life nearly impossible. Nearly half end up back in prison. This trend is known as **recidivism**, which refers to the rate at which returning citizens relapse into criminal behavior. In most states, less than 10% return for new crimes—most are for technical parole violations.

Two-thirds of incarcerated people reported to the Justice Department that they owed court-imposed fees and fines. Between **80-85%** leave prison already owing large sums of money. The lack of adequate rehabilitation programming, medical and behavioral health services, substance abuse treatment, educational opportunities, and family contact make reentering society a real challenge. Few facilities prepare inmates to be productive members of society; adjusting psychologically to life outside of prison can be extremely difficult.⁴⁰ It is common for inmates to be released directly from solitary confinement to society—in some extreme cases, after years.

“A tough veneer that precludes seeking help for personal problems, the generalized mistrust that comes from the fear of exploitation, and a tendency to strike out in response to minimal provocations are highly functional in many prison contexts but problematic virtually everywhere else.”

—Craig Haney, UC Santa Cruz
professor of psychology

Criminalization also degrades the conditions that can aid in recovery—such as access to addiction and mental health treatment, support networks, gainful employment, and education. Returning citizens are barred from accessing most government benefits, including the Supplemental Nutrition Assistance Program (SNAP) and public housing. In fact, they are prohibited from even entering public housing, which often prevents them from returning home, visiting family, or staying with relatives while getting back on their feet.

In addition to hardships associated with basic necessities like food and shelter, finding paid employment can be nearly impossible due to the stigma of incarceration. In many states, occupational licensure boards are allowed to reject applicants with criminal histories, even when that history has no relevance to the job.⁴¹

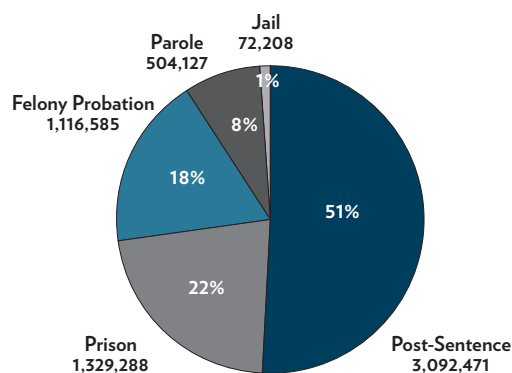
Even when returning citizens manage to find stable housing and obtain employment, strict parole rules often make failure inevitable. Parole violations are *the* prevailing cause of re-incarceration. According to the Bureau of Prison Statistics, **60%** of parolees who returned to incarceration in 2014 did so for a parole violation.⁴² In some states, not only do many returning citizens struggle to adhere to parole rules, they also struggle to pay for parole, which many states require.⁴³

“I had to deal drugs again to pay for my parole officer.”

—Randell M., an inmate featured in VICE
Special Report: Fixing the System

As many as **100 million** Americans, roughly one-third of the U.S. population, have a criminal record. Most states restrict voting rights for people convicted of felonies, while some prohibit felons from voting outright. The disenfranchisement of millions of former prisoners results in significant racial disparities among qualified voters. The Sentencing Project estimates that 6.1 million Americans are disenfranchised due to a felony conviction, over half of whom have finished their sentences.⁴⁴

Disenfranchisement Distribution Across Correctional Populations 2016



Source: The Sentencing Project, 2016

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