

AFJ Report

Reform in the criminal justice system in the US is critical to healing a divided country

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America claims to be committed to justice and the new Biden administration has promised greater equality and equity. The growing political, social and economic tensions inherited from previous administrations, as well as a contested election and a growing feeling of injustice, leave to the newly elected president a huge task ahead. He has vowed to reform the justice system, sending a clear message that injustices will be reversed.

The dramatic George Floyd event on May 25th 2020 and subsequent protests which followed have led to calls for a new approach to addressing racial injustice in the criminal justice system. Alongside this, there have been calls for alternative approaches, including restorative justice, to provide a place for people to talk about their needs and to be listened to, and to find ways to move forward.

The US has the highest level of incarceration in the world. Politicians from both parties have expressed a desire to change this, without significantly curbing the numbers. The Trump administration did however pass the First Step Act in 2018.

The growing violence that erupted during his term in office leaves a nation more divided than ever racially. Statistics tell us that African Americans and Hispanics are overly represented in prisons. Restorative justice can help to go beyond the reform and bridge the national gap.

The national incarceration rate is at its lowest in 20 years although 25% of the world's total prison population is in the United States. The great majority of prisoners are not in federal institutions but in the systems of the fifty federal states. It holds about almost 2.3 million people in 1,833 state prisons, 110 federal prisons, 1,772 juvenile correctional facilities, 3,134 local jails, 218 immigration detention facilities, and 80 Indian Country jails as well as in military prisons, civil commitment centers, state psychiatric hospitals, and prisons in the U.S. territories.

In terms of imprisonment rate per 100,000 people, the states of Louisiana, Oklahoma and Mississippi and Arkansas have the highest rates. All four of these states voted Republican in 2020. Eight of the ten states with the highest imprisonment rate voted for Trump in the last presidential election.

Federal Prisons are funded by the federal government, receiving larger budgets and with better services, facilities, food and training programs. Conversely, state prisons are typically funded by tax money generated by the state and poor management of state prison systems is common. They often have inadequate rehabilitation programs for inmates.

Persons incarcerated in federal prisons can be sent to any other federal prison in the country, whereas persons incarcerated in state prisons serve their entire sentence in the state where they are convicted. Federal prison systems are managed by the Federal Bureau of Prisons, a law enforcement agency under the Department of Justice. On the other hand, state prisons are managed by state authorities.

Restorative professionals and organizations challenge rather than replicate the unequal power structures in society. Fania Davis' *Little Book of Race and Restorative Justice* (2019) explores how race and the US criminal justice system intersect and gives ideas for practitioners and policy-makers to enact social change.

Addressing racism in everyday policy and practice is the precondition for a restorative intervention to take place. The absence of recognition of the racism in policy and everyday practice can be a barrier to many young people from black and minority ethnic backgrounds, often called the trust deficit.

Pono Kaulike is a Hawaiian initiative. Hawaii's criminal court provides restorative justice practices for healing relationships. Pono kaulike translates from Hawaiian to mean "equal rights and justice for all." The program began in 2003 and is named for a resolution enacted by the Hawaii State judiciary in 2000 for "Restorative Justice and Pono Kaulike."

Restorative justice addresses both physical and emotional needs, including the need to repair relationships and build positive connections after wrongdoing. Three basic questions are addressed by restorative practices: Who has been affected by the wrongdoing? How have they been affected? What can be done to repair the harm? Answering these questions in a restorative process promotes coping skills and healing as it recognizes the interconnectedness of people.

It is vital that restorative justice become increasingly sensitive to differing cross-cultural perspectives. Worldviews, perceptions of justice, and communication styles are greatly influenced by one's cultural milieu (Myers and Filner, 1993). Working with persons of different cultures or races, particularly in attempts at conflict resolution, can be a challenge with potential dangers and pitfalls. These should be taken into account when addressing reconciliation initiatives in the United States.

Crime is not merely an act of lawbreaking, it also tears the social or community fabric. It is the violation of one human being by another. To have a chance at restoration, victims of crime must have the opportunity to choose to be involved in the process of justice.

Restorative justice is founded on an alternative theory to the traditional methods of justice, which often focus on retribution. Academic assessment of restorative justice is positive with most studies suggesting it makes offenders less likely to

reoffend. A 2007 study also found that it had a higher rate of victim satisfaction and offender accountability than traditional methods of justice delivery.

According to John Braithwaite, restorative justice is a process where all stakeholders affected by an injustice have an opportunity to discuss how they have been affected by the injustice and to decide what should be done to repair the harm. Concerning crime, a key concept to restorative justice is the idea that because crime hurts, justice should heal. It follows that conversations between those who have been hurt and those who have inflicted the harm must be central to the process.

In many ways, restorative justice represents a validation of values and practices characteristic of many indigenous groups. The experiences of the Maori of New Zealand and First Nations of Canada have been profitable to the concept of restorative justice.

Prison building in the United States came in three major waves. The first began during the Jacksonian Era and led to the widespread use of imprisonment and rehabilitative labor as the primary penalty for most crimes. The second began after the Civil War and gained momentum during the Progressive Era, which brought a number of new mechanisms such as parole, probation and indeterminate sentencing. Finally, since the early 1970s, the United States has engaged in a historically unprecedented expansion of its imprisonment systems at both the federal and state level. The fourth wave could be the systematic implementation of restorative justice.

The Biden Plan for “Strengthening America’s Commitment to Justice” is based on several core principles:

- Reducing the number of people incarcerated and bringing down crime, which in turn will reduce federal spending on incarceration.
- A belief that there is no just criminal justice system unless the racial, gender, and income-based disparities are rooted out.
- The criminal justice system must be focused on redemption and rehabilitation.
- No one should be profiteering off of the criminal justice system.

The Biden administration has also vowed to pass legislation which will abolish the death penalty at the federal level and to try to convince states to enact similar legislation.

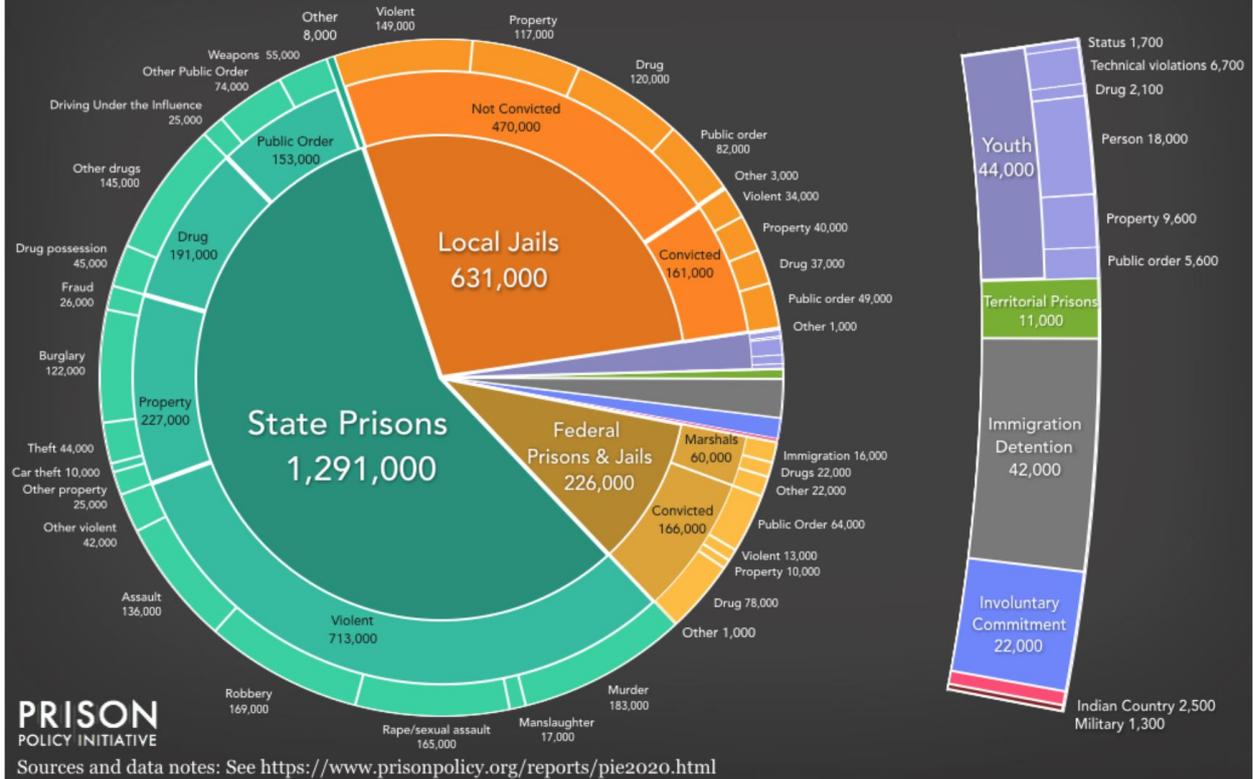
The First Step Act is intended to do two things: cut unnecessarily long federal sentences and improve conditions in federal prison. One year after the First Step Act was signed, the federal prison population was around 5,000 people lower, continuing several years of declines.

The First Step Act calls for the Bureau of Prisons to significantly develop this trend. Within a few years, the BOP must have “evidence-based recidivism reduction programs and productive activities” available for *all* people in prison, including vocational training, educational classes, and behavioral therapy.

President Trump signed the law which was the first criminal justice reform bill passed in nearly a decade. The Biden administration will need to put it into practice and respect the principles outlined by his own government. He has just under four years to show evidence of success and achieve reconciliation among Americans. If encouraged and implemented, restorative justice will benefit the country as a whole. Otherwise, disparities will continue to widen the gap among its citizens and leave a worse situation in the hands of Biden’s successor.

How many people are locked up in the United States?

The U.S. locks up more people per capita than any other nation, at the staggering rate of 698 per 100,000 residents. But to end mass incarceration, we must first consider *where* and *why* 2.3 million people are confined nationwide.



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