COLOR OF CHANGE

WINNING JUSTICE

THE PROSECUTOR PROJECT

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SIX DEMANDS

- ☑ IMPLEMENT PRETRIAL REFORMS
- ☑ TREAT KIDS LIKE KIDS
- ☑ STOP LOW-LEVELPROSECUTIONS
- ☑ END THE SECRECY
- ☑ AVOID IMMIGRATION CONSEQUENCES
- ☑ HOLD POLICE ACCOUNTABLE

IMPLEMENT PRETRIAL REFORMS

Increase eligibility for mandatory and presumptive prebooking release without conditions, end the use of money bail for all offenses, and expand recommendations to release people on their own recognizance with the least restrictive conditions.

Prosecutors must implement reforms related to pretrial incarceration in order to address devastating issues like overcrowding in jails, incarceration due solely to an inability to pay money bail and the life-altering collateral consequences of pretrial detention. Reforms should include: 1. creating a wider net of people eligible for mandatory and presumptive prebooking release without conditions; 2. expanding recommendations to release people on their own recognizance (ROR) or with the least restrictive conditions to their freedom; and 3. ending the use of money bail for all offenses. On any given day, more than 83% of people incarcerated in U.S. jails have not been convicted of their alleged crime.[1] More than 60% are in jail simply because they cannot afford bail.[2] The money bail system criminalizes poverty, contributes to and augments racial bias in the criminal legal system and has dire consequences for those entrapped in the system and for their communities.[3] By making conditions of release contingent upon an ability to pay, money bail creates a system of wealth-based detention.

Even if someone is never convicted of an alleged crime, pretrial incarceration — being removed from one's life and community for months or years — often has disastrous effects on the accused, their loved ones and, by extension, their community. Pretrial detention can result in swift loss of employment and income, destabilization of housing, family separation and family trauma. Research has further confirmed that cash bail or supervision does not increase the likelihood an accused person will appear in court or deter possible recidivism.[4]

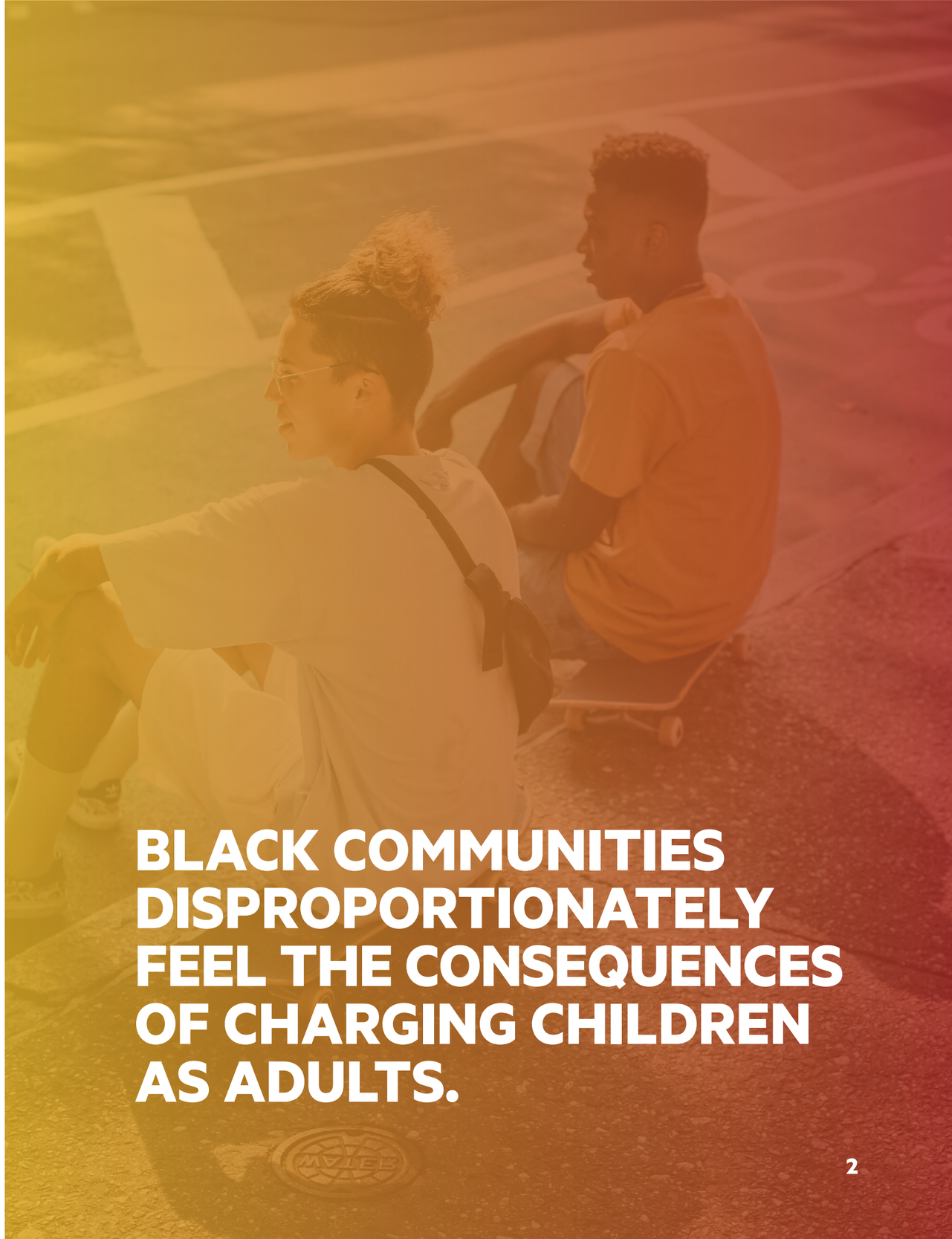


TREAT KIDS LIKE KIDS

Do not prosecute people under age 18 in adult court.

An estimated 76,000 children are prosecuted, sentenced, or incarcerated as adults annually.[5] Each time a prosecutor charges a child as an adult, or opposes transferring a child's case back to juvenile court, prosecutors fail not only the child, but entire communities by undermining public safety and creating barriers to rehabilitation. Children in adult jails are more likely to suffer permanent trauma and are five times more likely to die by suicide than children held in juvenile detention centers.[6] Incarcerating children with adults also deprives them of access to essential programs and services that are fundamental to successful re-entry into their communities, including but not limited to education instruction, health care and counseling services.[7] Youth in the adult criminal legal system also face a higher risk of sexual abuse, physical abuse and solitary confinement.[8]

Black communities disproportionately feel the consequences of charging children as adults. Black children are three times more likely to be referred to court compared to white children.[9] In 2018, Black youths represented less than 15% of the total youth population, but 52% of youth prosecuted in adult criminal court. Black youths are nine times more likely than white youths to receive an adult prison sentence.[10]



STOP LOW-LEVEL PROSECUTIONS

Decline to prosecute low-level offenses such as those that criminalize poverty, including homelessness, sex work (purchase and sale), drug possession and so-called "nuisance" crimes; decline to prosecute "resisting arrest" charges; limit the use of bench warrants for failure to appear. Decline to prosecute abortion and other pregnancy outcomes. Decline to prosecute pregnant people for actions during pregnancy where the fetus, embryo or fertilized egg is impacted.

Black people have been over-policed for generations, leading to gross disparities in arrests and incarceration rates.

Data continually shows that enforcement of low-level offenses such as drug possession offenses, sex work and other "quality of life" offenses do not increase public safety.[11] In fact, the disparate and over-enforcement of these low-level law violations devastate under-resourced individuals and communities. Jurisdictions where lawmakers or prosecutors have ceased to prosecute people for drug possession, sex work and/or other low-level offenses have not experienced negative public health or safety consequences.[12] For example, in Baltimore, declination policies have led to fewer new low-level drug and prostitution arrests, almost no re-arrests for serious crimes for those whose charges were dropped and fewer 911 calls. A study of Boston DA Rachael Rollins' policies showed that not prosecuting misdemeanors led to reductions in arrests for felonies.[13]

Additionally, sweeping attempts to criminalize pregnancy and pregnancy outcomes and to restrict access to reproductive care threatens the well-being of communities and erodes trust in the legal system. Prosecutors, however, have the discretion to not criminalize deeply personal decisions and ensure the safety of patients and providers in these cases. By instituting a declination policy, prosecutors can ensure that child-bearing people will not be prosecuted for their pregnancy outcomes and that feticide laws will not be used as a proxy for punishing pregnancy loss.



END THE SECRECY

Increase transparency within local prosecutors' offices by publishing guidelines on charging decisions, engaging regularly and intentionally with community-based organizations to share data and hear recommendations and collecting and publicly releasing criminal justice data.

Prosecutors must make every effort to increase office transparency by publishing guidelines on charging decisions and engaging regularly and intentionally with community-based organizations to share data and to hear recommendations. Prosecutors also must increase transparency by collecting and regularly making public criminal justice data, including but not limited to data on pretrial decisions, court cases, sentences and demographics, as well as data on diversions, misdemeanors, juvenile prosecutions and sentencing recommendations and outcomes for adult felony cases broken down by offense type and race/ethnicity/gender/indigency status of people charged.

Additionally, the office should hold regular trainings on bias, racism and racial equity. Prosecutors must engage in expectation setting with staff, prioritizing evidence-based solutions and reforms that actually promote public safety and health over a commitment to filling cages.

PROSECUTORS MUST MAKE EVERY EFFORT TO INCREASE OFFICE TRANSPARENCY BY PUBLISHING GUIDELINES ON CHARGING DECISIONS AND ENGAGING REGULARLY AND INTENTIONALLY WITH COMMUNITY-BASED ORGANIZATIONS TO SHARE DATA AND TO HEAR RECOMMENDATIONS.

AVOID IMMIGRATION CONSEQUENCES

Ensure protections for non-citizens by declining to cooperate with U.S. Immigration and Customs Enforcement, or ICE, and by training line prosecutors on handling cases with potential immigration consequences and instituting an office-wide policy to consider immigration circumstances and avoid negative immigration consequences in cases where relevant.

Prosecutors play an essential role in ensuring immigration protections and keeping families together. Although federal immigration laws allow non-citizens to be subject to deportation for low-level, non-violent offenses such as traffic violations and theft, non-citizens should not be targeted and used to drive up conviction rates. Targeting immigrants for low-level offenses routinely leads to unnecessary and unjust deportations. These practices undermine public safety because the threat of harsh collateral consequences also can deter people from cooperation and seeking resources from prosecutors' offices.

Prosecutors must hire special immigration counsel to train line prosecutors on handling cases with potential immigration consequences. Prosecutors also must make clear to line prosecutors and defense counsel their prevailing office policy of considering immigration circumstances and avoiding negative immigration consequences for people where relevant. Prosecutors also must adopt a policy of declining to cooperate with ICE and the U.S. Department of Homeland Security to identify people who may be subject to deportation.



HOLD POLICE ACCOUNTABLE

Increase transparency and accountability by establishing a separate division, walled off from the rest of the prosecutor's office, to investigate and prosecute cases against police officers alleged to have committed crimes while on duty. This office should report only to the elected prosecutor.

The working relationships between prosecutors and police officers can complicate the pursuit of justice, including when officers are alleged to have engaged in misconduct. Prosecutors must display neutrality and maintain the integrity of the office when working with police officers. In doing so, prosecutors must decline to accept political contributions or endorsements from police unions or foundations.

Prosecutors should work to curb the disparate impact of over-policing. Pretextual stops have contributed to countless police killings, such as those of Tyre Nichols in Memphis in January 2023 and Philando Castile in July 2016 in Minnesota. This change will require prosecutors to implement policies categorically declining and making clear which offenses will not result in charges. As such, prosecutors must comply and affirmatively enforce existing laws to decline to prosecute charges resulting from pretextual non-public safety stops, including minor traffic offenses; develop and publish a Brady/Giglio list of non-credible law enforcement officers whose testimonies prosecutors will not seek nor use in court; actively seek and obtain police misconduct records and share them with the defense as part of discovery; and publish "decline to prosecute" decisions on use-of-force cases involving police officers.

PROSECUTORS MUST DISPLAY NEUTRALITY AND MAINTAIN THE INTEGRITY OF THE OFFICE WHEN WORKING WITH POLICE OFFICERS.

END NOTES

[1] Mass Incarceration: The Whole Pie 2023, Prison Policy Initiative (2023), https://www.prisonpolicy.org/reports/pie2023.html.

[2] Marik Xavier-Brier, The Civil Rights Implications of Cash Bail, U.S. Commission on Civil Rights (January 2022), https://www.usccr.gov/files/2022-01/USCCR-Bail-Reform-Report-01-20-22.pdf.

[3] Money bail refers to any use of money to secure bond whether it's directly paid to the court system or arranged through for-profit, commercial bail bond companies.

[4] "Bail, Jail and Pretrial Misconduct: The Role of Prosecutors," Megan Stevenson and Aurelie Ouss, June 2020.

[5] https://www.childrensdefense.org/policy/resources/soac-2020-youth-justice/

[6] Campaign for Youth Justice. 2018. "Let's Get Children Out of Adult Courts, Jails, and Prisons." Washington, DC: Campaign for Youth Justice. http://www.campaignforyouthjustice.org/images/factsheets/Basic_Facts_FINAL.pdf.

[7] https://www.childrensdefense.org/state-of-americas-children/soac-2021-youth-justice/

[8] https://jlc.org/issues/youth-tried-adults; http://www.campaignforyouthjustice.org/images/factsheets/Basic_Facts_FINAL.pdf

[9] https://www.vera.org/state-of-justice-reform/2017/the-state-of-youth-justice

[10] https://www.childrensdefense.org/state-of-americas-children/soac-2021-youth-justice/

[11] Amanda Agan et. al,, Misdemeanor Prosecution, Q. J. Econ (Aug. 2022) https://www.nber.org/system/files/working_papers/w28600/w28600.pdf.

[12] https://publichealth.jhu.edu/2021/baltimores-no-prosecution-policy-for-low-level-drug-possession-and-prostitution-finds-almost-no-rearrests-for-serious-offenses

[13] https://commonwealthmagazine.org/criminal-justice/study-finds-not-prosecuting-misdemeanors-reduces-defendants-subsequent-arrests/

