

How the Biden-Harris Administration Can Advance Criminal Justice Reform

PROPOSALS FOR THE FIRST 100 DAYS



December 2020

INTRODUCTION

There is growing bipartisan agreement around the need for change in our nation's justice system – and communities are increasingly embracing reform, as evidenced by polling, the leaders voters are electing, and initiatives they are adopting. These proposed actions come at a critical moment in time, when our nation is facing a surging pandemic, loss of life among those behind bars, calls for long overdue fortifying of police accountability, and a reckoning with racial injustice.

The aim of this overview document is to focus on things that can be done by the new Biden-Harris administration in their *first 100 days* – whether via guidance, edict, or practices put in place by new leadership. In FJP's earlier report, "[How the Biden-Harris Administration Can Advance Criminal Justice Reform: 13 Recommendations for Change and Federal Engagement](#)," we lay out in greater detail longer term ways the new administration can take action, in partnership with Congress and others, to make progress towards the justice system that Americans overwhelmingly demand and that all communities in our nation deserve.



PROPOSALS FOR THE FIRST 100 DAYS

- 1 Promote and Prioritize Racial Equity
- 2 Reform Policing and Enhance Police Accountability
- 3 Apply a Harm Reduction Approach to Drug Policy and Substance Use
- 4 Reverse Cruel and Inhumane Immigration Policies and Promote a Just Immigration System
- 5 End the Justice System's Poverty Penalty and Excessive Costs, Fines, and Fees
- 6 Adopt and Support Policies That Treat Kids Like Kids and Recognize Their Diminished Culpability and Capacity for Change
- 7 Improve Conditions of Confinement in Federal Custody
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- 9 Establish and Promote Sentencing Second Chances, Second Look Opportunities, and Conviction Integrity Review
- 10 End the Federal Death Penalty
- 11 Establish Fair, Just, and Equitable Charging, Plea Negotiation, and Sentencing Policies
- 12 Appoint the Right People and Encourage the Right Culture in the Department of Justice and Throughout the Federal Government
- 13 Support and Promote 21st Century Prosecution

"Being tougher on crime is easy.... Being smart on crime is a challenge."

-Mark Gonzalez

Nueces County (Corpus Christi, TX) District Attorney

1

Promote and Prioritize Racial Equity

Why?

- Racial inequities in every aspect of the criminal justice system have decimated communities of color over decades and mass incarceration is “[the new Jim Crow](#).”
- Black men are [six times](#) as likely, and Hispanic men are 2.7 times as likely, to be incarcerated as white men.
- The imprisonment rate for Black women is [twice](#) that of white women.
- About [1 in every 12](#) Black men in their 30s is in prison or jail on any given day.
- These issues and concerns permeate every aspect of the criminal justice system.



How?

- Direct the Department of Justice (DOJ) to **collect, track, and release data on race** in the criminal justice system, that:
 - Includes stops, arrest, bail requests, charging decisions, plea bargains, sentencing recommendations, and parole board recommendations; and
 - Is disaggregated by race, gender, neighborhood, and disability.
- Revoke President Trump’s [executive order](#) banning **anti-bias training** in federal agencies and the subsequent DOJ [memo](#) suspending all activity related to diversity and inclusion.
- Direct US Attorneys to prioritize diverse and inclusive **hiring and promotion** to make these offices more racially and culturally diverse and to designate a supervisory position responsible for diversity and inclusion matters within the office.
 - Review and repeal past policies that have a negative impact on the hiring of people from minority communities.
 - Make an effort to hire for diversity to ensure culturally diverse thinking and to attract new hires from underrepresented communities.
 - Eliminate bias in the evaluation process and the administration of promotion opportunities.

"As long as we see racial inequality in the U.S., we are going to see racial inequities in the criminal justice system. We have the obligation to do everything we possibly can to make sure it is fair and just for all."

-Michael Dougherty

20th Judicial District (Boulder, CO) District Attorney

2

Reform Policing and Enhance Police Accountability

Why?

- Recent police killings and protests underscore the need to **reimagine policing**.
- Local police departments [routinely respond](#) to minor threats with excessive force and **military-style weapons**.
- Black men are [2.5 times more likely](#) to be **killed by police** than white men.
- Officers are [rarely held accountable](#) for misconduct.

How?

- Direct the Attorney General to strengthen **use-of-force standards** required for local law enforcement agencies to be certified to receive federal funds. Standards should:
 - Limit the use of deadly force to only when there is an imminent threat of death,
 - Ban deadly force against suspects who are fleeing,
 - Require officers to use the minimum amount of force required to neutralize a threat or apprehend a suspect,
 - Emphasize the use of de-escalation techniques over physical force,
 - Offer specific guidelines on the proper use of equipment and weapons,
 - Require respect for first amendment expression, and
 - Mandate immediate medical care for anyone injured in police custody.
- Reinvigorate the **Office of Community Oriented Policing Services (COPS)** and direct it to:
 - Advance the principles set forth in the [Final Report of the Task Force on 21st Century Policing](#) – and create a new leadership group to build out those principles with the benefit of recent lessons learned, and
 - Resurrect the [Collaborative Reform Initiative](#) process.
- **Immediately end the Department of Defense's 1033 program** and ban federal agencies from selling or freely providing military-grade weapons (including grenades, helicopters, and armored vehicles) to local law enforcement.
 - Policing agencies need to rebuild trust with communities; these programs only erode trust.
 - If the Department of Defense does continue to transfer any non-military-grade materials to local law enforcement agencies, it should institute strict standards on how such materials can be used, ensuring they are never deployed against peaceful protesters, are never the first line-of-defense against individuals suspected of committing crimes, and are only used to mitigate imminent threats to human life.

2

Reform Policing and Enhance Police Accountability *(continued)*

How?

- Establish federal grant programs and funding streams to **support and incentivize policing best practices** including:
 - **Alternative responder models** that remove law enforcement as the default first responder for individuals experiencing mental health or substance use crises;
 - Building out **body worn camera** programs nationwide, with accompanying policies to (a) ensure footage is made publicly available absent a compelling reason for nondisclosure and (b) prohibit officers from viewing footage before filing reports;
 - **Peer intervention** training and zero tolerance for dishonesty; and
 - Databases tracking police misconduct.
- **Revitalize DOJ's Civil Rights Division** and encourage it to enter into, and enforce, consent decrees and pursue police misconduct prosecutions.
- Instruct DOJ to develop a plan for collecting, analyzing, and publicly reporting data on **arrest-related deaths** collected under the [Death in Custody Reporting Act of 2013](#).
 - DOJ remains [ill-equipped](#) to collect data from states related to deaths of people who have been detained, arrested, or incarcerated. While the 2013 law updated and improved several aspects of the original 2000 law, it did not provide funding for states to improve their data collection systems.

"We have seen across the country repeated instances of police violence inflicted upon people of color and the Black community – often by officers with prior known misconduct, yet whose word prosecutors continued to trust."

-Chesa Boudin

*City and County of San Francisco, CA
District Attorney*



3

Apply a Harm Reduction Approach to Drug Policy and Substance Use

Why?

- The “**war on drugs**” has been a **colossal failure**; we need to move to a public health and harm reduction approach to drug use.
- Every **25 seconds** someone in America is **arrested for drug possession**.
- **1 in 5** persons incarcerated is locked up for a **drug offense**.
- While white and Black Americans use drugs at roughly equal rates, **Black people are about 250% more likely to be arrested** for drug offenses. Pursuing low-level offenses – like drug possession – can lead to deadly police interactions for people of color.
- Prosecutors are **twice as likely** to pursue a **mandatory minimum sentence** for black people than for white people charged with the same offense.
- **Overdose rates are rising** across the country, and at even greater rates during the COVID-19 pandemic.

How?

- Instruct DOJ to: (a) support states and local communities that seek to open **overdose prevention sites** (including by not contesting the legality of these strategies and by withdrawing claims in pending litigation that they violate federal drug laws), (b) issue guidance to federal prosecutors to refrain from prosecuting clients, staff, and volunteers involved in these lifesaving overdose prevention efforts, and (c) prioritize the urgent need for a **public health response** to our nation’s overdose epidemic.

“Rather than relying on medical science, our leaders have been influenced by the same misguided approaches that undergirded the ‘war on drugs’ in the 1980s – fear, stigma and racism.”

-Dan Satterberg

King County (Seattle, WA) Prosecuting Attorney



3

Apply a Harm Reduction Approach to Drug Policy and Substance Use *(continued)*

How?

- Promote and support **new thinking around marijuana and drug policy.**
 - **Reinstate and strengthen the Obama-era [Cole Memorandum](#)**, which stated that DOJ would not enforce federal marijuana prohibition in states that legalized marijuana.
 - While the original Cole Memorandum had eight carve-outs where federal marijuana prosecution would be justified, even in states that have legalized marijuana, a new and improved memorandum should limit carve-outs to those that have an impact on violence and public safety.
 - The rescinding of the Cole memo by AG Sessions in 2013 left states and businesses in legal limbo and may have chilled some from moving forward with reforms.
 - Direct Customs and Border Protection to **no longer bar travelers** from entering the country if they admit to working or investing in the marijuana industry, or if they admit to past use of marijuana.
 - Given the starting point of legalization in Canada, and elsewhere, these laws simply don't make sense.
 - Direct the Drug Enforcement Administration to **end barriers to cannabis research.**
 - As a Schedule 1 drug, marijuana has been subject to strict limits on its access. These federal barriers preclude research that can enhance understanding around the benefits as well as dangers of marijuana use. These barriers can be lifted through DEA rule-making.
 - Support local prosecutors as they **deprioritize low-level offenses**, such as **drug use and possession**, and direct federal prosecutors to **stop prosecuting these offenses**. Recognize the need to prioritize Black lives over offenses deemed “quality of life” violations.
 - Publicly support **longer-term efforts to decriminalize and legalize marijuana, halt all prosecution of drug use and simple possession**, and embrace a harm reduction starting point – rather than criminalization – in response to substance use disorder.
 - The President, VP, and AG can use their bully pulpit to support efforts that seek to move away from criminalizing substance use and possession – prosecutions that have a racially disproportionate impact on communities of color – and instead embrace harm reduction strategies.
 - Announce plans to prioritize funding for **deflection programs and preventative community-based harm reduction and treatment programs** over interventions that criminalize people who use drugs, such as drug courts and abstinence-based conditions of supervision or diversion.

4

Reverse Cruel and Inhumane Immigration Policies and Promote a Just Immigration System

Why?

- [More migrants were apprehended](#) at the U.S. southern border in 2019 than had been annually in the previous 12 years.
- The number of **ICE arrests** rose [30 percent](#) in 2017 and remains higher than it has been since 2014.
- The United States forced more than [60,000 asylum seekers](#) to leave the country last year.
- The Trump administration implemented a cruel and inhumane family separation policy, whereby more than [5,500 children](#) were separated from their parents, at least 545 of whom even today cannot be reunited with family.

How?

- Immediately **rescind and reverse deeply concerning and harmful DOJ and Department of Homeland Security policies**, including:
 - **Family separation policies** that allow immigration enforcement personnel to remove migrant children from their families.
 - Severe **limits on individuals' ability to seek asylum** in the U.S., including:
 - [Prohibitions](#) on granting asylum to anyone who crosses the U.S. southern border without asking every other country they passed through for asylum,
 - Drastic [limitations](#) on asylum eligibility and caps on refugee admissions,
 - Unnecessary [fees](#) for asylum-seekers, and
 - The public charge rule – rescind this rule issued by DHS in 2019 on a nationwide level and/or enter into a stipulation in pending litigation that seeks to reverse this restriction.
 - The “public charge” rule gives U.S. immigration officials more power to reject petitions for legal permanent residency from immigrants who they determine rely – or could rely – on public benefits like food stamps, housing vouchers, or Medicare; it is the subject of lawsuits seeking to overturn its application.
 - **Racist [travel bans](#)** that prohibit people from certain countries from entering the U.S.
 - The “**Remain in Mexico**” [Migrant Protection Protocols](#) that force non-Mexican asylum-seekers to wait in Mexico while U.S. immigration courts adjudicate their claims.
 - The placement of **sanctuary city restrictions** on federal grants.
 - The **287(g) program** that promotes concerning [cooperation](#) between local law enforcement and Immigration and Customs Enforcement (ICE) that undermines trust.
 - The [collection](#) of DNA samples from individuals crossing the Southern border.
 - The [deportation](#) of immigrants charged with minor offenses or undocumented entry into the U.S.
 - The [directive](#) for federal agencies to secure the Southern border by building a wall and the subsequent [national emergency declaration](#) that allowed monies to be diverted from the Pentagon to the border wall.
 - [Guidance](#) limiting the use of, and halting the consideration of new applications under, the Deferred Action for Childhood Arrivals (DACA) program.

4

Reverse Cruel and Inhumane Immigration Policies and Promote a Just Immigration System *(continued)*

How?

- **Enhance fairness.**
 - Remove the **Executive Office of Immigration Review** from DOJ and create an [independent immigration court system](#) that is guided by the pursuit of just results, governed by procedural rules regarding evidence and discovery that protects due process and the constitutional rights of those in proceedings, and is open and accessible.
 - Restore funding to DOJ's [Legal Orientation and Help Desk Programs](#), which provide crucial information to people involved in the immigration justice system.
 - Reinstate and strengthen federal programs that support legal representation and know-your-rights trainings for unaccompanied children and other vulnerable immigrants.
 - End all contracts with **for-profit facilities** that hold adults and children in immigration detention or post-conviction.
- Impose a **100-day moratorium on deportations** and direct ICE and U.S. Attorney's offices to focus their deportation and prosecution efforts on violent offenders who pose a public safety risk, including by:
 - Revoking the [April 2018 "zero tolerance" policy](#) for illegal reentry;
 - This required the prosecution of all 1325(a) violations.
 - Directing the Attorney General to issue guidance declaring a return to policies that allowed prosecutors to use discretion in deciding when and if to prosecute immigration offenses, such as unlawful entry under Section 1326, and to do so only when a public safety interest is clearly implicated, and to cease prosecutions under Section 1325; and
 - Directing the Attorney General to close the [new section](#) of DOJ's Office of Immigration Litigation dedicated to pursuing denaturalization cases against immigrants accused of crimes.
- Direct ICE to **stop all arrests and enforcement action in courthouses, schools, hospitals, and other areas** that should remain as safe spaces.
- Encourage increased and more **prompt and robust processing and issuance of U Visas**, including by:
 - Issuing guidance that encourages law enforcement and prosecutors to certify these requests more expansively and more promptly;
 - Providing mechanisms to get a work permit while awaiting final approval; and
 - Reversing the "blank space policy" that allows applications to be rejected when any spaces are not completed, whether or not the omitted information is relevant.

"We now work in an atmosphere of fear and intimidation that discourages victims and witnesses, both documented and undocumented, from coming forward to report crimes."

-Eric Gonzalez

Kings County, NY District Attorney

5

End The Justice System's Poverty Penalty and Excessive Costs, Fines, and Fees

Why?

- While over [80%](#) of people in prison come from low-income families, the average incarcerated person **incurs over \$13,000 in court fees**.
- While sometimes making only a [few cents per hour](#) for their labor, incarcerated people must **pay far-above-market rates** to [call home](#), [purchase necessities](#), or even [read books](#).
- After their release from custody, many individuals are prevented from rebuilding their lives as a result of [lingering fines and fees](#).

How?

- Issue guidance to federal prosecutors directing them to: **oppose the imposition of fines or fees** in cases where doing so would not advance a just resolution, consider a defendant's ability to pay before demanding any monetary penalty, support motions to waive or reduce fines and fees against individuals who are unable to pay, and not seek to incarcerate individuals for simple failure to pay.
- Direct the Bureau of Prisons (BOP) to institute **fair price controls** for goods and services sold to inmates in the federal system, including [commissary items](#), phone time, or [technological devices](#) used for educational or communication purposes.
- Instruct the Attorney General to immediately reinstate the **2016 "Dear Colleague" letter** to State Court Administrators and Chief Justices outlining common practices in the assessment and enforcement of fines and fees at the state and local level that violate federal law or the U.S. constitution.
- Encourage DOJ to investigate court practices that impose fines and fees as a method of raising revenue.



"If people think I'm going to arrest people for poverty, for not having a home, it's not going to happen. It's morally objectionable and it's financially disastrous."

-Tori Verber Salazar

San Joaquin County, CA District Attorney



Adopt and Support Policies that Treat Kids Like Kids and Recognize their Diminished Culpability and Capacity For Change

Why?

- Black students are [1.9 times](#) as likely to be **expelled** from school without educational services as white students.
- When students are suspended or expelled, there is a [significant increase](#) in their likelihood of being involved in the **juvenile justice system** the following year.
- An estimated [2.1 million](#) youth under the age of 18 are **arrested** in the United States each year.

How?

- Instruct DOJ to prohibit federal prosecutors from seeking **life without the possibility of parole** and *de facto* life (40+ year) sentences for youth and to not oppose resentencing of individuals who received this sentence.
- Instruct DOJ to reinstate the seven Office of Juvenile Justice and Delinquency Prevention [guidance documents](#) that were rescinded by the Trump administration, and relating to: status offenders and the JJDP, separation requirements, nonsecure custody of juveniles in adult facilities, disproportionate minority contact, and audits of compliance monitoring systems.
- Instruct DOJ to rescind the OJJDP COVID-19 [guidance](#) issued in May 2020 and issue new guidance consistent with the [proposals](#) of the Act 4 Juvenile Justice Coalition.
 - Specifically, issue guidance that helps states and territories improve emergency planning during the pandemic, especially related to releases, testing, and reentry support.
- Direct OJJDP to issue guidance on best practices around **youth arrest and interrogation** that recognize the unique vulnerabilities of young people to coercion, including (a) ensuring that a parent/legal guardian and an attorney are present for the entire interrogation, (b) video and audio taping the entire Miranda warning and interrogation process (including breaks), and (c) prohibiting deception or coercion when interrogating a young person.
- **School-Based Issues**
 - Instruct DOJ to **end** the Office of Justice Programs, Bureau of Justice Assistance, and COPS office [grant programs](#) that provide **funding incentives to schools that hire armed resource officers**, bring police officers into school buildings, or electronically monitor student activity.
 - Instruct DOJ and the Department of Education to re-issue Obama-era [joint guidance](#) on **countering racial disparities in school discipline**.



Improve Conditions of Confinement in Federal Custody

Why?

- Roughly [40 percent](#) of those incarcerated report struggling with a mental health issue, and more than half struggle with drug use or dependence.
- As of December 15, over [276,000 people](#) in prison had **contracted COVID-19**, while at least 1,738 had died.
- Correctional **education** lowers recidivism rates and boosts post-release employment.

How?

- Instruct the BOP to create a clear, transparent policy for **awarding earned time credits**, which were expanded by the First Step Act.
 - Direct agencies, including the Department of Education and the Department of Labor, to assess and improve **correctional education programs** to ensure that they align with eligibility requirements and goals for funding under existing educational and workforce development grant programs, like the Second Chance Pell Experimental Sites Initiative, One Workforce Grant Program, Perkins IV, College Access Challenge Grant Program, and Tech-Prep Demonstration Program.
- Direct the BOP to make **phone and video calls free** in all federal prisons.
- Direct the BOP to **end the use of [solitary confinement](#)** in federal facilities.
- Immediately **end all contracts with private prisons** by declining to renew private prison contracts that have lapsed and refusing to enter into future contracts with for-profit federal prisons.
- Ensure **humane conditions of confinement** for those who must remain in BOP custody during the COVID-19 pandemic, including:
 - Directing the BOP Health Services Division to collaborate with on-site medical staff, facility leaders, and public health experts to quickly develop and implement a plan for **widespread COVID-19 testing and prioritized vaccination** of correctional staff and people in custody, safely and humanely housing people who are sick, and providing high-quality medical care to all who need it;
 - Providing free sanitation products and masks to those in custody;
 - Implementing strict capacity limits on housing units to ensure people in custody are able to distance and developing a contingency plan for units that exceed capacity, which should include a re-review of all rejected petitions for compassionate release; and
 - Sharing information about COVID-19 and mitigation strategies with those in custody.
- Work to eliminate the Federal Medicaid Exclusion Policy (MIEP) and ensure continuum of health care coverage for those returning to their communities from prison.

8

Support Improved and Expanded Pathways to Successful Reentry

Why?

- Pre-COVID [estimates](#) suggest that the **unemployment rate among returning individuals was 27%** – higher than the total U.S. unemployment rate has ever been in history.
- Lack of opportunity leads many of these individuals **back into the system**; COVID-19 has only exacerbated these trends and will likely have a lasting impact on reentry populations.

How?

- Direct the Department of Labor and DOJ to increase funding to reentry grant programs, including the Pathway Home and Young Adult Reentry Partnership and [Second Chance Act Grant Program](#).
- Direct the Department of Housing and Urban Development (HUD) to issue guidance (a) ensuring individuals are not disqualified from **HUD-assisted housing** because of their criminal histories and (b) advising local housing authorities that discrimination against individuals with criminal histories violates federal law.
- Direct the AG and DOJ to issue guidance and revisit policies to address cycling of individuals through the justice system based on **overuse of community supervision** and **technical violations** of probation and supervised release.

"Successful reentry and rehabilitation is a public safety issue, full stop. But more importantly, this is an issue of fairness."

-Andrew Warren

13th Judicial Circuit (Tampa, FL)
State Attorney



9

Establish And Promote Sentencing Second Chances, Second Look Opportunities, And Conviction Integrity Review

Why?

- The United States is the world's leader in incarceration with [2.2 million](#) people currently in the nation's prisons and jails — **a 500% increase over the last 40 years.**
- The lifer population has nearly [quintupled](#) since 1984.
- Between 1993 and 2013, the share of people age **55 or older** in state prisons **increased by 400 percent.**
- The public [increasingly supports](#) **shrinking the justice system** and investing in prevention.

How?

- Establish an **independent Clemency Commission** to make clemency recommendations directly to the President.
 - Remove the clemency process from the supervision of DOJ and restructure it as an independent freestanding agency, within the White House or Office of the President, and under strong leadership.
 - Structure the Clemency Commission so that:
 - Its members include representatives with diverse backgrounds and a range of interests that play a role in the criminal justice process.
 - Its members are not subject to confirmation by the legislative branch or subject to any other limitations by the other branches.
 - It is independent and is not subject to supervision by DOJ because of the conflict created by putting those in charge of prosecution in charge of second-guessing those same prosecution decisions.
 - Empower the commission to take a more proactive approach that moves expeditiously on clemency requests.
 - Strategies would include:
 - Proactively investigating and soliciting more clemency petitions;
 - Evaluating injustices in individual cases based on the specific facts of that case, even if the underlying law has not changed; and
 - Not awaiting the end of a term (as is too often the case) to evaluate and grant clemency petitions.

9

Establish And Promote Sentencing Second Chances, Second Look Opportunities, And Conviction Integrity Review *(continued)*

How?

- Instruct the Attorney General, federal prosecutors, and Bureau of Prisons to promptly implement policies to promote **sentencing reductions and compassionate release** requests, including under the First Step Act, and create a high-level group to evaluate and propose *within 90 days* additional mechanisms for resentencing and release of elderly individuals who can safely return to the community and have been in custody for more than 15 years.
 - Direct the AG to use authority under the CARES Act to release to home confinement elderly and medically vulnerable individuals who pose no serious risk to the safety of others.
 - These recommendations are particularly important at a time when COVID-19 has been spreading like wildfire through BOP facilities, but even after the pandemic this recalibration and revisiting of excessive past sentences is important.
- Support the build out of **post-conviction justice review** essential to correcting past injustices.
 - Direct US Attorneys to create and implement conviction review [best practices](#) within their offices
 - In 2014 the DC US Attorney's Office created a [CIU](#) – apparently, the only CIU in a USAO – but that process has yet to meet best practices or robustly respond to concerns regarding past cases.
 - Expand the existing [“Preventing Wrongful Convictions” federal grant program](#) to support more local DA offices interested in adopting *both* conviction and sentencing review – processes vital to promoting trust in the justice system.
 - Many offices and elected prosecutors seek to implement a process for conviction and sentencing review but have inadequate resources to do so.

"Longer sentences do not protect public safety.... Even people who commit monstrous acts very young are not monsters. Overwhelmingly, they evolve. Overwhelmingly, they are capable of growth and change, and can safely be brought home."

-Larry Krasner
Philadelphia, PA District Attorney



10

End the Federal Death Penalty

Why?

- Use of the death penalty is generally on the decline, and is garnering [increased opposition \(including by criminal justice leaders\)](#), but has been resurrected at a federal level in recent years.
- The United States was one of only [20 countries](#), and **the only [Western democracy](#)**, to use the death penalty last year.
- **Racial disparities** are a grave concern. Juries are far [more likely](#) to impose death in cases involving Black defendants or white victims.
- Since 1973, at least [172](#) people on death row have been **exonerated**.
- The National Academy of Sciences [estimates](#) that over 4 percent of death row prisoners are **innocent**.

How?

- *Immediately* institute a **moratorium on federal executions**.
- Instruct the Attorney General to **withdraw all pending execution warrants**, death penalty authorizations in pending cases, and refrain from setting any new federal execution dates.
- **Commute the death sentences** of all remaining federal and military death row prisoners to life sentences.
- **Dismantle the existing federal death chamber** and work with federal and state leaders to **end the death penalty** nationwide.

"There is no evidence that the death penalty is any more of a deterrent to murder, any more an enhancement of public safety, or any more a restoration of justice than a life sentence. But there is ample evidence nationally that there is bias in the use of capital punishment, that execution costs taxpayers more than life sentences, and that as long as the state sanctions execution there will always exist the possibility, however remote, that we might take an innocent life which we cannot give back."

-Kathy Jennings
Delaware Attorney General



11

Establish Fair, Just, and Equitable Charging, Plea Negotiation, and Sentencing Policies

Why?

- As many as [95 percent](#) of criminal cases are resolved through **plea bargains**.
- [15 percent](#) of people who have been **exonerated** of crimes they didn't commit pled guilty.
- **Prosecutorial misconduct**, including concealed exculpatory evidence and witnesses allowed to perjure themselves, played a role in [30 percent of cases](#) from 1989 to 2019 that later resulted in exonerations.

How?

- **Restore discretion** – Instruct the Attorney General to reverse the [current DOJ policy](#) requiring prosecutors to seek and only accept pleas to the highest possible charge.
- Instruct the Attorney General to issue guidance that creates a strong presumption against, and heavily discourages, federal prosecutors from seeking life without parole sentences, especially for non-homicide offenses, or filing mandatory enhancements (such as those required under section 851 for prior convictions).
- **Promote fairness and due process.**
 - Issue guidance to end any policies that require defendants to **waive their right to an appeal** in order to enter into a plea agreement.
 - Instruct the AG to issue guidance that prohibits seeking enhanced charges or added penalties if a defendant exercises the **right to trial** or the right to challenge constitutional violations.



12

Leadership Matters – Appoint The Right People and Encourage the Right Culture in the Department of Justice and Throughout the Federal Government

Why?

- Over the last four years, the administration has implemented policies that have negatively impacted our criminal justice system, our immigration system, and our civil and human rights – thereby eroding trust in law enforcement and the rule of law.
- The Biden-Harris administration should commit to not only reinstating prior policies and practices that were reversed by the current administration but also going further in its pursuit of equitable and compassionate policies.

How?

- Quickly appoint **committed, diverse, and reform-minded leaders** to head the Office of Community Oriented Policing Services, the Office of Juvenile Justice and Delinquency Prevention, the Bureau of Justice Assistance, and as U.S. Attorneys.
 - Appoint, and move quickly on the confirmation of, leaders at the Department of Homeland Security who value our history as a nation of immigrants.
 - Don't allow these positions to languish unfilled.
- Make the head of the **White House Drug Office** a Cabinet position and fill that job with someone who brings *public health* expertise.
- Restore pre-2016 funding and staffing levels that reestablish the **Office of Access to Justice**.
- Restore the proactive work and focus of the **DOJ Civil Rights Division** and direct the Attorney General to rescind AG Jeff Sessions' [guidance](#) on the use of consent decrees and issue new guidance re-affirming the pivotal role of consent decrees in ensuring that state and local agencies comply with federal law and the U.S. constitution.



13

Support and Promote 21st Century Prosecution

Why?

- Almost 90% of incarcerated people are detained in **state and local facilities**.
- A growing number of local prosecutors are being elected on platforms promising to dismantle mass incarceration, ensure equity, and increase public safety in jurisdictions around the country.
- These leaders are creating a *new normal* in the field of prosecution, but they are also increasingly facing challenges and under attack – often as a result of a false narrative suggesting that their proven reforms are somehow making communities less safe.

How?

- Establish a **Task Force on 21st Century Prosecution**, modeled on the Obama-era [Task Force on 21st Century Policing](#), that seeks to assess mechanisms to develop, encourage, and promote new thinking in prosecution.
- Create and promote **incentive grants** that support local and state prosecutorial reform.
 - These grants should include funding for CIUs, data development, sentencing second chances, peer intervention training, and other best practices and [innovations in 21st Century Prosecution](#).

"People ought not beg our systems to treat them humanely; our systems ought to be run by people who are human."

-Kim Foxx

Cook County (Chicago, IL) State's Attorney



For more information, visit FairandJustProsecution.org