



# Racial and Ethnic Disparities throughout the Criminal Legal System

## **A Result of Racist Policies and Discretionary Practices**

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*August 2021*

Differential treatment on the basis of race is well documented in the US criminal legal system. Definitions of criminality and criminal activity are rooted in structural inequalities between people of color and white people, and racist policies and practices have been used to control and separate communities of color. In addition, discretion given to individual system actors at each decision point in the system creates opportunities for racial biases to influence practices toward and outcomes for system-involved people. Racial biases are so deeply embedded in the criminal legal system that disparities based on race exist at each decision point, impacting subsequent decision points and resulting in negative outcomes for Black people and other people of color. It is imperative that researchers approach their work with an understanding of how racist policies and implicit biases interact within and throughout different aspects of the criminal legal system if they want to identify and promulgate more equitable policies and research.

## How Do We Define a Criminal Offense?

The United States has long created laws that have discriminated against people of color. Criminal offenses and their definitions have been determined by people in power, meaning they have been structured to maintain the status quo (Covington 1995). For example, the Black Codes and vagrancy laws were used to maintain control over Black communities during and after Reconstruction (Hinton,

Henderson, and Reed 2018). Moreover, Jim Crow laws prevented communities of color from accessing (often higher-quality) resources used by white communities, and economically based policies, such as convict leasing, redlining, and credit score usage, have continued to prevent people of color from generating wealth and developing resources in their neighborhoods and communities (Rothstein 2017).

In her 2010 book *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, Michelle Alexander illustrates how slavery and other laws and policies based explicitly on race have evolved into the modern-day criminal legal system, which is at the surface race neutral but is designed to exert control over people of color. She describes laws labeling people involved in nonviolent civil disobedience as criminals, which emerged in the mid-1900s to combat antisegregation movements. This desire to criminalize Black people and other integration allies persisted in further attempts to use law to disempower nonwhites.

After segregation was lifted, its supporters began targeting people who supported integration and had participated in the civil rights movement by introducing “get tough” rhetoric. This led to President Reagan aggressively expanding the war on drugs in the 1980s, even though drug crime was declining and only 3 percent of Americans reported being concerned about it (Alexander 2010).<sup>1</sup> Reagan promoted the us versus them narrative (known as othering) to implement “get tough” policies that target people of color, primarily Black and Latine people, who had been stereotyped as commonly engaging in criminal drug activity. As part of this war, the crack epidemic developed in inner cities, an epidemic that Reagan’s media campaign sensationalized and publicized (Alexander 2010), paving the way for laws that disproportionately targeted Black communities, such as harsh mandatory minimums for low-level drug offenses and sentencing disparities between powder and crack cocaine (Ghandnoosh 2014).<sup>2</sup> The war on drugs was used as a pretext to control communities of color. Further, false narratives that people of color were criminal were promoted by the media and garnered support for racist laws and policies.<sup>3</sup>

This disproportionate representation of people of color as perpetrators of crimes persists in modern media, including in news media and political speeches (Dixon and Linz 2000; Dixon et al. 2019; Gonzalez 2019; McMahon and Roberts 2011).<sup>4</sup> These false perceptions of Black criminality feed into and perpetuate a criminal legal system that is systemically racist. Research indicates that racial prejudice and incorrect beliefs about the criminality of people of color contribute to calls for harsh policing practices and sentencing and for fiscal support for the criminal legal system (Atwell Seate and Mastro 2016, 2017; Barkan and Cohen 1994, 2005, 2006; Chiricos, Welch, and Gertz 2004). Perceptions of the criminality of people of color are compounded by implicit dehumanizing bias, which theories suggest may strongly influence decisions resulting in racial disparities (Mizel 2018). Further, Donald Black (1976) suggests that those who maintain power in societies create laws that not only support their power, but allow for differential access to law and protection from the government. More recently, Kendi (2019) posited theories about how racism, which is built into and perpetuates existing power structures, intersects with class and culture to marginalize communities of color. For example, literacy tests and poll taxes disproportionately enacted by whites in the United States have affected

Black people and other people of color, excluding them from political decisionmaking and restricting their access to criminal legal system decisionmaking and change.

## Racial Inequities Affect How Our Systems Operate

Racism is pervasive in the US criminal legal system, and racist policies and practices are evident throughout the system and at each decision point of system involvement and case processing (Hinton and Cook 2020).<sup>5</sup>

### Policing

The first interaction many people have with the criminal legal system is with law enforcement. Research demonstrates that police officers' behavior is often discretionary and can be impacted by implicit bias (Fridell 2017). Such biases result in officers connecting people to stereotypes based on identity characteristics rather than actual behaviors. In the United States, stereotypes have associated Black and Brown people with criminal activity, resulting in policing behavior that impacts those communities differently and more severely than white communities (Fridell 2017). Research also shows that predominantly Black neighborhoods are subject to higher rates of police-initiated contact regardless of actual local crime rates (Fagan et al. 2010; Haldipur 2019), resulting in overpolicing of lower-level crime and behaviors. Despite this, police tend to underpolice these communities when contact is community initiated, such as during calls for service and requests for protection from harm (Prowse, Weaver, and Meares 2019; Rios, Prieto, and Ibarra 2020).

Biases against people of color are evident in racial and ethnic disparities in police stops and police-initiated contact. A 2016 study of policing in Oakland, California, found that Black residents accounted for 60 percent of stops of any type (e.g., vehicle, pedestrian, bicycle) by the police despite constituting only 28 percent of the city's population (Hetey et al. 2016). Black people are more likely than white people to have experienced a police-initiated contact as their most recent contact with law enforcement, including traffic stops and street stops (Davis, Whyde, and Langton 2018). In addition, Black adults are more likely than white adults to report having been unfairly stopped by police because of their race or ethnicity, and Black and Latine people are less likely to indicate street stops are legitimate than white people (Davis, Whyde, and Langton 2018).<sup>6</sup>

Biases are particularly apparent when looking at disparities in officers' discretionary actions. Officers are more likely to stop Black and Latine drivers than white drivers for infractions they have discretion to enforce, such as broken headlights, air fresheners hanging from rearview mirrors, and how long someone uses a turn signal before turning.<sup>7</sup> Further, during traffic stops, officers search Black and Latine drivers more often than white drivers, even though Black and Latine drivers carry contraband (e.g., drugs and drug paraphernalia) at similar or lower rates (Baumgartner, Epp, and Shoub 2018; Epp, Maynard-Moody, and Haider-Markel 2014; Hetey et al. 2016).<sup>8</sup> Moreover, officers are less likely to provide a reason for stopping Latine drivers than white drivers (Davis, Whyde, and Langton 2018). Several research studies have demonstrated these disparities and have also found disparities in

outcomes of stops, such as disparities in search rates and arrests following traffic stops (Pierson et al. 2020).<sup>9</sup>

More generally, many policing policies and practices have been rooted in racial biases. In the United States, one of the most common examples of bias in policing practices is the Broken Windows theory, which drives policing strategies in New York City and has resulted in police contact and aggression disproportionately directed at men of color (Berdejó 2018; Hinton, Henderson, and Reed 2018). Other strategies including “hot-spot policing,” “dagnet policing,” and increased, more intense surveillance tactics are also used by law enforcement in Black neighborhoods and exacerbate stereotypes about criminality among communities of color (Hinton and Cook 2020). Another harmful policing practice, stop and frisk, which the New York City Police Department used to racially profile people of color, was ruled unconstitutional in 2013 on the grounds that it violated the constitutional rights of people of color in the city; notably, racial profiling is not explicitly banned in policing in roughly a third of states (Brooks, Brock, and Bolling-Williams 2014).<sup>10</sup>

These practices rooted in bias result in disproportionate arrests of and use of force against people of color. Black people represent roughly 13 percent of the US population but account for roughly 27 percent of arrests, and American Indian/Alaskan Native people represent roughly 1.3 percent of the population but account for 2.4 percent of arrests.<sup>11</sup> Disparities are particularly stark when looking at arrests for drug law violations: Black people experience over one-quarter of arrests for drug law violations, despite similar rates of drug use among racial and ethnic groups.<sup>12</sup>

Police are also more likely to use force and excessive force against people of color during police contact (Goff et al. 2016). Black and Latine people are more likely than white people to be threatened with force during officer-initiated contact and to experience some form of force in interactions with police (Davis, Whyde, and Langton 2018; Fryer 2016). A 2016 study of use of force across 12 local law enforcement agencies found the same racial and ethnic disparities in the use of force as national studies (Goff et al. 2016).

Furthermore, Black people are twice as likely as white people to be killed by police (36 per million people versus 15 per million people, respectively) (Goff et al. 2016).<sup>13</sup> This disparate killing of Black people persists even when they and white people are unarmed: in 2018, more than 300 Black people were killed by law enforcement, and one-quarter of them were unarmed (Bor et al. 2018). Moreover, when police use force against community members, Black people are more than 2.8 times more likely to die than white people (DeGue, Fowler, and Calkins 2016).

Research attempting to determine causal factors related to these disparities shows that variations in crime rates do not explain differential treatment based on race in policing (Fridell 2017). As we have discussed in this section, individual and systemic biases drive racial and ethnic disparities in policing in the United States. Researchers conducting work on policing must continuously consider and acknowledge the direct and indirect effects of these biases on the disparate treatment in and outcomes of law enforcement contact by race.

## Case Processing and Incarceration

Reporting on case-processing data without addressing or recognizing factors related to racial bias and differential outcomes related to race ignores the fundamental truth that the US criminal legal and court systems are rooted in and perpetuate racial oppression, which allows data to be misrepresented and stereotypes to be perpetuated. Racial disparities manifest in pretrial case processing and detention, charging and sentencing decisions, and incarceration rates and treatment during incarceration.

Racial bias in the court system has been shown to affect pretrial outcomes directly and indirectly and can be seen as a result of oppression and discriminatory practices (Hinton, Henderson, and Reed 2018).<sup>14</sup> Because of the biases ingrained in this system, people of color are more likely to be assessed as safety or flight risks and detained pretrial because they lack resources to pay fines, fees, and bail and because they are more likely than white people to have a criminal record (Sentencing Project 2018). Pretrial detention is not intended to be used as punishment or inflicted on someone absent legitimate concerns about flight or safety risks, but this does not protect defendants from bias, because decisions about pretrial detention are often discretionary and made arbitrarily based on a decisionmaker's understanding of who is and is not dangerous (Arnold, Dobbie, and Yang 2018).

These biases result in the disproportionate incarceration of Black people and American Indian/Alaskan Native people in US jails (Zang and Minton 2019). People of color are not only more likely to be denied bail altogether, but are also more likely to receive higher bail amounts than white people and are often less likely to be able to afford it (Sentencing Project 2018).<sup>15</sup> This results in longer stays in pretrial detention and greater financial burden for system-involved people and their families.

Pretrial detention has been shown to negatively impact court outcomes. Being held in pretrial detention increases the odds of someone accepting a less favorable plea deal, and pretrial detention is linked to increased odds of conviction, sentences to prison, and longer sentences (Sentencing Project 2018). In addition, Black people are more likely than white people to receive punitive charges at arraignment, and disparities persist as they move through the court system (Mizel 2018). Specifically, research shows that in federal courts, prosecutors are more likely to charge Black people with offenses that carry higher mandatory minimums than white people who are similarly situated, and in state courts, prosecutors are more likely to charge Black people under habitual-offender laws than white people (Crawford et al. 2006; Hinton, Henderson, and Reed 2018). Again, this can be seen as a result of the implicit biases held by people empowered to make discretionary decisions (Mizel 2018).

The use of plea bargaining can also contribute to increased system involvement for people of color. Research indicates that prosecutors may be relying on race as a proxy for criminality and likelihood of dangerous future offending, impacting plea offers.<sup>16</sup> More specifically, as a result of prosecutorial discretion, white people are more likely to have their initial charges dropped or lessened, and are thus more likely to be convicted of crimes without incarceration time or not be convicted at all (Berdejó 2018).<sup>17</sup> This creates disparities in the types of charges people of color are convicted of and the penalties they receive, affecting their sentencing outcomes (Kansal 2005; Mitchell and MacKenzie 2004).

Biases throughout the court process also result in racial and ethnic disparities in prisons. Black, Latine, and American Indian/Alaskan Native people are often placed in more secure facilities and are incarcerated for longer periods than white people (Sentencing Project 2018), and Black people are incarcerated at rates higher than white people, with particularly stark disparities in some states (Carson 2020; Nellis 2016). At the end of 2019, 1,096 per 100,000 Black people in the United States were incarcerated in federal and state prisons, compared with 214 per 100,000 white people (Carson 2020). Black people are incarcerated in state prisons at 5.1 times the rate of white people and at a rate of more than 10 to 1 in Iowa, Minnesota, New Jersey, Vermont, and Wisconsin (Nellis 2016). Moreover, once incarcerated, people of color are more likely to be disciplined and charged with misconducts. A *New York Times* report about prisons in New York found that, while incarcerated, Black and Latine people were more likely than white people to be disciplined and placed in solitary confinement.<sup>18</sup> It found even larger disparities in discipline rates in situations allowing correctional officers to use discretion.

## Parole and Community Supervision

The biases that result in longer and more severe sentences and more disciplinary actions for people of color can also impact parole decisions, which consider people's behavior during incarceration, crime severity, criminal history, incarceration length, mental health, and victim input (Caplan 2007).<sup>19</sup> Black people spend more time in prison awaiting parole than white people (Huebner and Bynum 2008), and although race is not directly considered in parole decisions, racial and ethnic discrimination in sentencing can result in people of color serving more severe and longer sentences. In addition, biased policing behavior contributes to longer criminal records. Black people are also subject to more conditions to satisfy (e.g., completing a treatment program) before being released than white people (Carroll and Mondrick 1976; Petersilia 1985). Importantly, parole decisions result in biased parole outcomes because they consider factors that have been impacted by bias upstream in the criminal legal system.

Furthermore, because parole boards, judges, and other officials also have discretion over these decisions, factors including perceptions of remorse and inherent criminality can introduce additional bias.<sup>20</sup> Subjective by nature, perceptions of whether someone is remorseful can be impacted by cultural bias and other stereotypes, and expectations of remorse disadvantage people who have been wrongfully convicted (Khalikaprasad 2020). This additional opportunity for personal bias impacts the system, resulting in continued negative outcomes for communities of color. For example, one study found that, among people who have committed their first offense and are awaiting parole, Black people serve four more months on average than white people (Hughes, Wilson, and Beck 2001). Another study found that, at their first parole hearing, less than one in six Black and Latine men were released, whereas one in four white men were.<sup>21</sup>

Racial and ethnic disparities are also present in community supervision: Black men are 3.5 times more likely than white men to be under some form of community supervision.<sup>22</sup> Moreover, Black people under community supervision are more likely than white people to have their parole or probation revoked (Jannetta et al. 2014). An Urban Institute study of revocations in four jurisdictions found that

differences in criminal history and risk assessment scores contributed to racial disparities in revocation rates (Jannetta et al. 2014). The use of criminal history in revocation decisions is impacted by biases in policing and sentencing. Racist policies and practices in community supervision are not only impacted by biases upstream in the criminal legal system, but also effect outcomes. When researchers discuss findings about community supervision and parole, they must consider these biases and disparities if they want the data they share and publish to be accurate.

## **Algorithms, Assessments, and Technology**

Risk assessment tools often include measures (e.g., criminal history) that result in racial bias because of biases throughout the criminal legal system (Freeman, Hu, and Jannetta 2021).<sup>23</sup> In addition, the outcomes these tools measure are products of structural racism. For instance, with respect to likelihood of reoffending, true reoffending cannot be measured, so proxies (such as rearrest) that are impacted by systemic racism and individual biases throughout the criminal legal system are used instead. These proxies in part measure the racism of the system rather than an individual's risk of the outcome in question.

In addition to bias in assessments that rely on criminal legal system data, racial bias has been found in the use of several other types of algorithms and technologies used in the criminal legal system. For example, studies show that machine-learning algorithm software like facial recognition often discriminate based on race (Buolamwini and Gebru 2018).<sup>24</sup> As with other areas of the criminal legal system, the discussion of risk assessment tools and other predictive technology can be easily misinterpreted, or wrongly communicated when systemic racism is not taken into account.

## **Research Implications**

The practices we describe have greatly contributed to the overpolicing of communities of color and to disparities throughout the criminal legal system for Black people and other people of color. In addition to understanding the history of racism in the US criminal legal system and the biases that currently pervade it, it is imperative that researchers bring this understanding to their work and fully acknowledge that racial and ethnic disparities in the criminal legal system are caused by racist policies and practices. Researchers can start doing this by using the knowledge and lived experience of the communities most involved in the criminal legal system, framing designs with this history and context in mind, and being mindful of language choices. In this vein, we provide researchers the following recommendations.

### **Be Mindful of Language**

When describing findings, organizing research strategies, or discussing past literature, it is paramount that researchers use language that does not perpetuate racial stereotypes and biases. Doing this means understanding the history of such language and the connotations of language surrounding the criminal legal system. Using language that wrongly attributes crime to certain racial or ethnic groups because of

past disparities further harms the communities most victimized by the criminal legal system. For example, this brief uses “criminal legal system” rather than “criminal justice system” because the system is not just for many. Moreover, the notions of “warranted” and “unwarranted” disparities imply that some degree of racial and ethnic disparity in the system is acceptable and is even the result of characteristics inherent to racial and ethnic groups. Using this language is harmful and perpetuates false race-based stereotypes. The language also neglects to acknowledge the history of racism and context outside of the criminal legal system that lead to racial and ethnic disparities within the system

### **Frame Research Questions with the Appropriate Context**

Research questions must reflect and acknowledge the history of racist policies and practices in the criminal legal system and the role of current racial bias and individual discretion in case processing and at each decision point. Researchers should be aware not only of how their biases have shaped their understanding of the issues in question, but of how biases affect how they approach their research and the theories and research questions they use to guide their work. For example, instead of asking “What amount of racial and ethnic disparities in sentencing for drug-related offenses are warranted (e.g., not driven by actions within the criminal legal system)?” ask “What component of existing racial and ethnic disparities in sentencing for drug-related offenses are driven by factors outside the current criminal legal system?”

### **Contextualize Statistics with History and Drivers**

Statistics in published research should not be presented without the history, context, and drivers that surround them. Among types of research findings, statistics in particular can be used to drive racist ideologies when presented without background on where disparities come from and how they affect each area of the criminal legal system. Researchers should strive to provide statistical information and findings in their proper context, explain factors that may be driving disparities, and note how racial biases are woven into the system. For example, when discussing statistics of incarceration rates for drug-related offenses, include the history of racially motivated drug-related laws and enforcement. The statistics alone may reinforce stereotypes about race and drug use, which additional context can help prevent.

### **Use Community-Engaged Methods**

Community-engaged methods rely on the knowledge and experiences of the people at the center of a research topic and shift the power away from researchers and to affected communities—in this case, those most represented in the criminal legal system. Partnering with these communities throughout the entire research process helps ensure decisionmaking is rooted in lived experience rather than biases and stereotypes. Furthermore, it allows for research questions and findings that are relevant to the populations of interest.

# Notes

- <sup>1</sup> “A Brief History of the Drug War,” Drug Policy Alliance, June 25, 2021, <https://drugpolicy.org/issues/brief-history-drug-war>.
- <sup>2</sup> “Race and the Drug War,” Drug Policy Alliance, accessed May 25, 2021, <https://drugpolicy.org/issues/brief-history-drug-war>.
- <sup>3</sup> “Fight against world drug problem must address unjust impact on people of African descent, say UN rights experts,” Office of the United Nations High Commissioner for Human Rights, March 14, 2019, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24332&LangID=E>.
- <sup>4</sup> “President Trump’s Inaugural Address, Annotated,” NPR, January 20, 2017, <https://www.npr.org/2017/01/20/510629447/watch-live-president-trumps-inauguration-ceremony>.
- <sup>5</sup> Alice George, “The 1968 Kerner Commission Got it Right, but Nobody Listened,” *Smithsonian Magazine*, March 1, 2018, <https://www.smithsonianmag.com/smithsonian-institution/1968-kenner-commission-got-it-right-nobody-listened-180968318/>.
- <sup>6</sup> Drew DeSilver, Michael Lipka, and Dalia Fahmy, “10 Things We Know about Race and Policing in the U.S.,” Pew Research Center, June 3, 2020, <https://www.pewresearch.org/fact-tank/2020/06/03/10-things-we-know-about-race-and-policing-in-the-u-s/>.
- <sup>7</sup> Libby Doyle and Susan Nembhard, “Police Traffic Stops Have Little to Do with Public Safety,” *Urban Wire* (blog), Urban Institute, April 26, 2021, <https://www.urban.org/urban-wire/police-traffic-stops-have-little-do-public-safety>.
- <sup>8</sup> “Findings,” The Stanford Open Policing Project, accessed May 25, 2021, <https://openpolicing.stanford.edu/findings/>.
- <sup>9</sup> Radley Balko, “There’s overwhelming evidence that the criminal justice system is racist. Here’s the proof.” *Washington Post*, June 10, 2020, <https://www.washingtonpost.com/graphics/2020/opinions/systemic-racism-police-evidence-criminal-justice-system/>.
- <sup>10</sup> “Case Study: New York’s Stop-and-Frisk Policies,” Catalysts for Collaboration, accessed May 27, 2021, <https://catalystsforcollaboration.org/case-study-floyd-v-city-of-new-york/>; Taahira Thompson, “NYPD’s Infamous Stop-and Frisk Policy Found Unconstitutional,” The Leadership Conference Education Fund, August 21, 2013, <https://civilrights.org/edfund/resource/nypds-infamous-stop-and-frisk-policy-found-unconstitutional/>.
- <sup>11</sup> QuickFacts population estimates, July 1, 2019, United States Census Bureau, <https://www.census.gov/quickfacts/fact/table/US/PST045219>; Crime in the United States, Table 43A: Arrests by Race and Ethnicity, 2019, United States Department of Justice, Federal Bureau of Investigation Uniform Crime Reporting Program, <https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/topic-pages/tables/table-43>.
- <sup>12</sup> Table 20: Use of selected substances in the past month among persons aged 12 years and over, by age, sex, and race and Hispanic origin: United States, selected years 2002–2018, Centers for Disease Control and Prevention, <https://www.cdc.gov/nchs/data/hus/2019/020-508.pdf>; Crime in the United States, Table 43A: Arrests by Race and Ethnicity, 2019, Federal Bureau of Investigation Uniform Crime Reporting Program.
- <sup>13</sup> Julie Tate, Jennifer Jenkins, Steven Rich, John Muyskens, Joe Fox, David Fallis, and Danielle Rindler, “Fatal Force,” *Washington Post*, last updated May 27, 2021, <https://www.washingtonpost.com/graphics/investigations/police-shootings-database/>.
- <sup>14</sup> Wendy Sawyer, “How Race Impacts Who Is Detained Pretrial,” Prison Policy Initiative, October 9, 2019, [https://www.prisonpolicy.org/blog/2019/10/09/pretrial\\_race](https://www.prisonpolicy.org/blog/2019/10/09/pretrial_race).
- <sup>15</sup> Sawyer, “How Race Impacts Who Is Detained Pretrial.”

- <sup>16</sup> “Research Finds Evidence of Racial Bias in Plea Deals,” Equal Justice Initiative, October 26, 2017, <https://eji.org/news/research-finds-racial-disparities-in-plea-deals/>.
- <sup>17</sup> “Research Finds Evidence of Racial Bias in Plea Deals,” Equal Justice Initiative.
- <sup>18</sup> Michael Schwartz, Michael Winerip, and Robert Gebeloff, “The Scourge of Racial Bias in New York State’s Prisons,” *New York Times*, December 3, 2016, <https://www.nytimes.com/2016/12/03/nyregion/new-york-state-prisons-inmates-racial-bias.html>.
- <sup>19</sup> Schwartz, Winerip, and Gebeloff, “The Scourge of Racial Bias in New York State’s Prisons.”
- <sup>20</sup> “The Color of Justice,” Constitutional Rights Foundation, accessed May 27, 2021, <https://www.crf-usa.org/brown-v-board-50th-anniversary/the-color-of-justice.html>.
- <sup>21</sup> Michael Winerip, Michael Schwartz, and Robert Gebeloff, “For Blacks Facing Parole in New York State, Signs of a Broken System,” *New York Times*, December 4, 2016, <https://www.nytimes.com/2016/12/04/nyregion/new-york-prisons-inmates-parole-race.html>.
- <sup>22</sup> Jake Horowitz and Connie Utada, “Community Supervision Marked by Racial and Gender Disparities: African-Americans, Men Overrepresented in Probation and Parole Population,” Pew Charitable Trusts, December 6, 2018, <https://www.pewtrusts.org/en/research-and-analysis/articles/2018/12/06/community-supervision-marked-by-racial-and-gender-disparities>.
- <sup>23</sup> William Douglas Heaven, “Predictive Policing Algorithms Are Racist. They Need to Be Dismantled,” MIT Technology Review, July 17, 2020, <https://www.technologyreview.com/2020/07/17/1005396/predictive-policing-algorithms-racist-dismantled-machine-learning-bias-criminal-justice/>; Rebecca Heilweil, “Why Algorithms Can Be Racist and Sexist,” Vox, February 18, 2020, <https://www.vox.com/recode/2020/2/18/21121286/algorithms-bias-discrimination-facial-recognition-transparency>; John Murray, “Racist Data? Human Bias is Infecting AI Development,” Towards Data Science, April, 24, 2019, <https://towardsdatascience.com/racist-data-human-bias-is-infecting-ai-development-8110c1ec50c>.
- <sup>24</sup> Meilan Solly, “Art Project Shows Racial Biases in Artificial Intelligence System,” *Smithsonian Magazine*, September 24, 2019, <https://www.smithsonianmag.com/smart-news/art-project-exposed-racial-biases-artificial-intelligence-system-180973207/>.

## References

- Alexander, Michelle. 2010. *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. New York: New Press.
- Arnold, David, Will Dobbie, and Crystal S. Yang. 2018. “Racial Bias in Bail Decisions.” *Quarterly Journal of Economics* 133 (4): 1,885–932.
- Atwell Seate, Anita, and Dana Mastro. 2016. “Media’s Influence on Immigration Attitudes: An Intergroup Threat Theory Approach.” *Communication Monographs* 83 (2): 194–213.
- . 2017. “Exposure to Immigration in the News: The Impact of Group-Level Emotions on Intergroup Behavior.” *Communication Research* 44 (6): 817–40.
- Barkan, Steven E., and Steven F. Cohn. 1994. “Racial Prejudice and Support for the Death Penalty by Whites.” *Journal of Research in Crime and Delinquency* 31 (2): 202–09.
- . 2005. “Why Whites Favor Spending More Money to Fight Crime: The Role of Racial Prejudice.” *Social Problems* 52 (2): 300–14.
- . 2006. “Racial Prejudice and Support by Whites for Police Use of Force: A Research Note.” *Justice Quarterly* 15 (4): 743–53.
- Baumgartner, Frank R., Derek A. Epp, and Kelsey Shoub, 2018. *Suspect Citizens: What 20 Million Traffic Stops Tell Us About Policing and Race*. Cambridge, GBR: Cambridge University Press.

- Berdejó, Carlos. 2018. "Criminalizing Race: Racial Disparities in Plea-Bargaining." *Boston College Law Review* 59 (4): 1,187–249.
- Black, Donald J. 1976. *The Behavior of Law*. New York: Academic Press.
- Bor, Jacob, Atheendar S. Venkataramani, David R. Williams, and Alexander C. Tsai. 2018. "Police Killings and Their Spillover Effects on the Mental Health of Black Americans: A Population-Based, Quasi-Experimental Study." *The Lancet (British Edition)*, 392 (10144): 302–10.
- Brooks, Cornell W., Roslyn M. Brock, and Barbara Bolling-Williams. 2014. *Born Suspect: Stop-and-Frist Abuse & the Continued Fight to End Racial Profiling in America*. Baltimore: The National Association for the Advancement of Colored People.
- Buolamwini, Joy, and Timnit Gebru. 2018. "Gender Shades: Intersectional Accuracy Disparities in Commercial Gender Classification." *Proceedings of Machine Learning Research* 81: 77–91.
- Caplan, Joel M. 2007. "What Factors Affect Parole: A Review of Empirical Research." *Federal Probation* 71 (1).
- Carson, E. Ann. 2020. "Prisoners in 2019." Washington, DC: Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.
- Carroll Leo, and Margaret E. Mondrick. 1976 "Racial Bias in the Decision to Grant Parole." *Law & Society Review* 11: 93–107.
- Chiricos, Ted, Kelly Welch, and Mark Gertz. 2004. "Racial Typification of Crime and Support for Punitive Measures." *Criminology* 42 (2): 358–390.
- Covington, Jeanette. 1995. "Racial Classification in Criminology: The Reproduction of Racialized Crime." *Sociological Forum* 10 (4): 547–68.
- Crawford, Charles, Ted G. Chiricos, and Gary Kleck. 1998. "Race, Racial Threat, and Sentencing of Habitual Offenders." *Criminology*, 36 (3): 481–512.
- Davis, Elizabeth, Anthony Whyde, and Lynn Langton. 2018. "Contacts between Police and the Public, 2015." Washington, DC: US Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.
- DeGue, Sarah, Katherine A. Fowler, and Cynthia Calkins. 2016. "Deaths Due to Use of Lethal Force by Law Enforcement: Findings from the National Violent Death Reporting System, 17 U.S. States, 2009–2012." *American Journal of Preventive Medicine*, 51 (5): S173–S187.
- Dixon, Travis L., and Daniel Linz. 2000. "Overrepresentation and Underrepresentation of African Americans and Latinos as Lawbreakers on Television News." *Journal of Communication* 50 (2): 131–54.
- Dixon, Travis L., Kristopher R. Weeks, and Marisa A. Smith. 2019. "Media Constructions of Culture, Race, and Ethnicity." In *Oxford Research Encyclopedia of Communication*. Oxford, GBR: Oxford University Press.
- Epp, Charles R., Steven Maynard-Moody, and Donald Haider-Markel. 2014. *Pulled Over: How Police Stops Define Race and Citizenship*. Chicago: University of Chicago Press.
- Fagan, Jeffrey, Amanda Geller, Garth Davies, and Valerie West. 2010. "Street Stops and Broken Windows Revisited." In *Race, Ethnicity, and Policing: New and Essential Readings*, edited by Stephen K. Rice and Michael D. White. 309–48. New York: NYU Press.
- Freeman, Kelly Roberts, Cathy Hu, and Jesse Jannetta. 2021. "Racial Equity and Criminal Justice Risk Assessment." Washington, DC: Urban Institute.
- Fridell, Lorie A. 2017. *Producing Bias-Free Policing: A Science-Based Approach*. New York: Springer.
- Fryer Roland G., Jr. 2016. "An Empirical Analysis of Racial Differences in Police Use of Force." Cambridge, MA: National Bureau of Economic Research.
- Ghandnoosh, Nazgol. 2014. "Race and Punishment: Racial Perceptions of Crime and Support for Punitive Policies." Washington, DC: The Sentencing Project.
- Goff, Phillip A., Tracey Lloyd, Amanda Geller, Steven Raphael, and Jack Glaser. 2016. *The Science of Justice: Race, Arrests, and Police Use of Force*. Los Angeles: Center for Policing Equity.

- Gonzalez, Eduardo. 2019. "Stereotypical Depictions of Latino Criminality: US Latinos in the Media during the MAGA Campaign." *Democratic Communiqué* 28 (1): 46.
- Haldipur, Jan. 2018. *No Place on the Corner: The Costs of Aggressive Policing*. New York: NYU Press.
- Hinton, Elizabeth, and DeAnza Cook. 2020. "The Mass Criminalization of Black Americans: A Historical Overview." *Annual Review of Criminology* 4: 261–86.
- Hinton, Elizabeth, LeShae Henderson, and Cindy Reed. 2018. "An Unjust Burden: The Disparate Treatment of Black Americans in the Criminal Justice System." New York: Vera Institute of Justice.
- Huebner, Beth M., and Timothy Bynum. 2008. "The Role of Race and Ethnicity in Parole Decisions." *Criminology* 46 (4): 907–38.
- Hughes Timothy A., Doris James Wilson, and Allen J. Beck. 2001. *Trends in State Parole: 1990–2000*. Washington, DC: Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.
- Jannetta, Jesse, Justin Breaux, Helen Ho, and Jeremy Porter. 2014. *Examining Racial and Ethnic Disparities in Probation Revocation: Summary Findings and Implications from a Multisite Study*. Washington, DC: Urban Institute.
- Kansal, Tushar. 2005. *Racial Disparities in Sentencing: A Review of the Literature*. Washington, DC: Sentencing Project.
- Kendi, Ibram. 2019. *How to Be an Antiracist*. London: Bodley Head.
- Khalikapasrad, Lovashni. 2020. "Remorse, Not Race: Essence of Parole Release?" *Journal of Race, Gender, and Ethnicity* 9 (1): 131–49.
- Hetey, Rebecca C., Benoît Monin, Amrita Maitreyi, and Jennifer L. Eberhardt. 2016. *Data for Change: A Statistical Analysis of Police Stops, Searches, Handcuffings, and Arrests in Oakland, Calif., 2013–2014*. Stanford, CA: Stanford University, Social Psychological Answers to Real-World Questions.
- McMahon, Will, and Rebecca Roberts. 2011. "Truth and Lies about 'Race' and 'Crime'." London: Centre for Crime and Justice Studies.
- Mitchell, Ojmarrh, and Doris L. MacKenzie. 2004. "The Relationship between Race, Ethnicity, and Sentencing Outcomes: A Meta-Analysis of Sentencing Research." Washington, DC: Department of Justice, Office of Justice Programs.
- Mizel, Matthew L. 2018. "A Plea for Justice: Racial Bias in Pretrial Decision Making." PhD. diss., University of California, Los Angeles.
- Nellis, Ashley. 2016. *The Color of Justice: Racial and Ethnic Disparity in State Prisons*. Washington, DC: Sentencing Project.
- Petersilia Joan. 1985. "Racial Disparities in the Criminal Justice System: a Summary." *Crime & Delinquency* 31 (1): 15–34.
- Pierson, Emma, Camelia Simoiu, Jan Overgoor, Sam Corbett-Davies, Daniel Jenson, Amy Shoemaker, Vignesh Ramachandran, Phoebe Barghouty, Cheryl Phillips, Ravi Shroff, and Sharad Goel. 2020. "A Large-Scale Analysis of Racial Disparities in Police Stops across the United States." *Nature Human Behaviour* 4 (7): 736–45.
- Prowse, Gwen, Vesla M. Weaver, and Tracey L. Meares. 2020. "The State from Below: Distorted Responsiveness in Policed Communities." *Urban Affairs Review* 56 (5): 1,423–471.
- Rios, Victor, Greg Prieto, and Jonathan M. Ibarra. 2020. "Mano Suave–Mano Dura: Legitimacy Policing and Latino Stop-and-Frisk." *American Sociological Review* 85 (1): 58–75.
- Rothstein, Richard. 2017. *The Color of Law: A Forgotten History of How Our Government Segregated America*. 1st ed. New York: Liveright Publishing Corporation.
- Sentencing Project. 2018. *Report of the Sentencing Project to the United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia, and Related Intolerance: Regarding Racial Disparities in the United States Criminal Justice System*. Washington, DC: Sentencing Project.
- Thorkildsen, Zoe, Emma Wohl, Bryan Walther, Bridgette Bryson, and Brittany Cunningham. 2019. *Maricopa County Sheriff's Office Traffic Stops Analysis Report: July 2017–December 2018*. Phoenix: Maricopa County Sheriff's Office.

Wallace, Danielle, David H. Tyler, Kelsey Kramer, Katherine G. Kempany, Brooks Louton, Gary Sweeten, Norah Ylang, Ana Daniels, Matthew Gricius, and Julianna Hale. 2018. *Annual Report for the Maricopa County Sheriff's Office: Years 2016 to 2017*. Phoenix: ASU Center for Violence Prevention and Community Safety.

Zang, Zhen, and Todd D. Minton. 2019. "Jail Inmates in 2019." Washington, DC: United States Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.

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## Acknowledgments

This brief was funded by the Urban Institute. The views expressed are those of the authors and should not be attributed to the Urban Institute, its trustees, or its funders. Funders do not determine research findings or the insights and recommendations of Urban experts. Further information on the Urban Institute's funding principles is available at [urban.org/fundingprinciples](https://urban.org/fundingprinciples).



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