

JUSTICE SYSTEM REFORM

Introduction: The United States now leads the world in the number of people incarcerated. The crime rate has been steadily declining, but, according to research, not simply because of increased incarceration¹. We are incarcerating more people, many for non-violent crimes; and the effects of incarceration are mostly negative. Not only are people not rehabilitated in prison, but more than 50 percent return in less than three years—either because they violate conditions of parole or because they commit another crime. Frequently this is a result of an underlying mental health problems or addiction to drugs or alcohol or because they cannot get legal employment due to their criminal background. The people who are caught up in the system are not treated equitably; people of color are six times more likely to get severe punishment than whites who commit the identical crime.

The criminal justice system is a large, complex system in need of substantial reform. The major participants in the system include: police/sheriffs, courts (judges, prosecutors and defense attorneys), probation (supervision and/or services as an alternative to serving a prison term), jails (where people go before they are sentenced), prisons (where they serve time after they are sentenced) and parole (the system to supervise their activities after release). The system should be designed to reduce crime and provide corrective outcomes for those who commit crimes. However, the design and operation of the system have been corrupted so that the results do not meet societal goals. Too often the participants in the system are working in environments that obstruct the purpose of criminal justice. A parole officer is rewarded based on the number of people sent back to prison rather than the number who successfully reenter their communities. A judge “throws the book” at every defendant for fear one might commit a heinous crime and make it difficult for her to win reelection. A legislator votes to cut education budgets in prisons because they fear being “soft on crime”. Participants may be within the bounds of what they are supposed to do, but they have lost sight of the purpose of their work.

There are two dimensions of the justice system that need to be addressed to make it more effective and equitable. First, the system must be **designed** to reduce violent crime and address the underlying causes of crime—mental illness, substance abuse, exposure to trauma and inadequate education/employment in many communities. Second, the **implementation** of the new design must be done effectively and equitably. Those operating the system must understand the purpose of the system (crime reduction paired with corrective outcomes for those who commit crimes); have good data to assess whether the system is achieving its intended goals; adjust accordingly; and recognize and address historic systemic racism and individual implicit bias.

System Design: Reorganizing the justice system is a complex undertaking. It operates at the local, regional, state and federal levels — with policies designed and administered by all three branches of government at each level. There are, however, a series of fundamental principles which can serve as the basis for a system wide reform:

1. Violent people must be isolated from the rest of the community, confined in the least restrictive setting to protect others and themselves.

¹ Oliver Roeder, Lauren-Brooke Eisen, Julia Bowling, *What Caused The Crime Decline*, The Brennan Center for Justice, 2015

2. The underlying cause of the violence (mental illness, addiction, etc.) must be determined and treated, either in prison or a secure treatment setting.
3. The weapons that constitute much of the violent activity must be harder to access and better monitored. This includes prohibiting the frequent purchase of multiple guns (straw purchases); enhancing background checks for past crimes and mental illness; and enforcing laws to track lost and stolen guns.
4. Sentencing laws must be examined and revised so that the punishments are proportionate to the crime committed, for example, murder and intent to sell drugs— paired with some charge of violence like resisting arrest— are both Class X crimes. An 18 year-old who had sex with a 16 year old can be on the Sexual Predator Registry for life.
5. Prisons must be designed to rehabilitate through education and employment training.
6. Post-release oversight should be designed to help people be successful once they leave prison, not to catch them on technical violations of conditions of parole.
7. Criminal records should not inhibit future success: for those who remain crime free for a designated period of time, there should be simple ways to expunge or seal a record.
8. The underlying causes of **non-violent** offenses (mental illness or substance abuse) should also be considered at the time of police intervention, arrest, trial and sentencing. There must be adequate services to address those causes in local communities, and those communities must be equipped to take responsibility for those people and their families rather than sending them off to the state only to have them return later, typically not in better condition after prison.
9. As many people as possible should be diverted out of the system. Particularly with younger offenders, it has been demonstrated that the best lifetime outcomes are achieved by keeping them out of the justice system.

Implementation: To make even the best designed system operate as it should, there must be sound implementation of the principles that will result in the goal of reduced violence and better outcomes for those who touch the justice system. This can be accomplished through four operational principles that are simple, but challenging to achieve:

10. Those working in the system must understand its goals and be rewarded based on achieving them. (E.g., a state's attorney should not wage a reelection campaign based on the volume of indictments, but on the reduced level of violence and increased rehabilitation in the community.)
11. The system should be designed and presented in such a way that those attracted to work there are doing so because of the positive goals and because they work in a culture that supports those goals. (I.e., there must be people committed to change in the system willing to work in the system).
12. Those working in the system must be well trained and be provided with the resources needed to reach their goals.
13. The system must engage and build partnerships with communities in order to create an effective response, strengthen social supports and ensure that there is a continuum of care that makes the system as a whole more effective and efficient.

¹ Oliver Roeder, Lauren-Brooke Eisen, Julia Bowling, *What Caused The Crime Decline*, The Brennan Center for Justice, 2015