



SOUTHERN POVERTY LAW CENTER

PRESIDENTIAL TRANSITION PRIORITIES

PROMOTE CRIMINAL JUSTICE REFORM
AND DECARCERATION EFFORTS

SPLC | ACTION 

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Recent years have underscored an undeniable truth in this country — our criminal justice system has done irreparable harm to communities of color over the course of generations. Whether it is through police brutality against individuals like George Floyd and Breonna Taylor, the school-to-prison pipeline, or systematically filling our jails and prisons with over 2.3 million people nationwide, we see that our justice system does not provide justice for all.

In the Deep South, issues of policing and mass incarceration have been exacerbated by a “tough on crime” culture that too easily criminalizes the existence of Black and Brown people. Louisiana, for example, has become infamous as the “incarceration capital of the world” for having the highest number of incarcerated people per capita of any state in the U.S.¹ Likewise, Alabama has struggled with having the most overcrowded prisons in the country, now at 176% of the state’s designed prison capacity.² These problems have disproportionately impacted people of color and created a significant strain on state finances.

Decision makers have a choice about how they want to address public safety — either invest more resources towards institutions producing police violence and overcrowded prisons, or invest in more systematic solutions for systematic problems. The Southern Poverty Law Center strongly encourages our newly elected officials to consider our recommendations for police accountability, decarceration, and community investment.

EXECUTIVE ACTION

➡ **Eliminate Department of Justice-imposed barriers to creating or enforcing police consent decrees to help ensure accountability for local police departments involved in systematic misconduct.**

While he was U.S. attorney general, Jeff Sessions issued guidance that significantly narrowed the Justice Department’s use of consent decrees involving police misconduct.³ These consent agreements are court orders designed to not only change harmful policies, but also address the underlying culture that created them. While consent decrees are a powerful tool against police misconduct, the Trump administration failed to act on its authority, even as to a series of police-involved killings happening during its term. Using consent decree authority will go far in restoring accountability of law enforcement.

➡ **Rescind Department of Justice sentencing guidance calling for federal prosecutors to “charge and pursue the most serious, readily provable offense.”**

Another of Sessions’ “tough on crime” directives was to establish a more stringent charging and sentencing policy, supposedly supporting a policy that “advances public safety, and promotes respect for our legal system.”⁴ The policy requires federal prosecutors to pursue the most serious offenses that carry the longest sentences upon conviction. This guidance also immediately rescinded all prior policy directives from the Obama administration that allowed greater leniency. With Black people most likely to be convicted of crimes carrying the heaviest sentences, this policy threatens to add permanence to racial disparities within the federal prison population, which is currently 38% Black.⁵ Any progress on decarcerating overcrowded and expensive prisons must include a reconsideration of our approach to sentencing.

➡ **Restore vigorous Department of Justice pattern-or-practice civil rights enforcement of police misconduct.**

The Department of Justice’s Civil Rights Division has the authority to conduct investigations of any local law enforcement agency in the country to address patterns and practices of police misconduct and brutality.⁶ If this agency finds systemic issues, it can negotiate remedies enforced by a court order, and bring a lawsuit if an agreement cannot be reached. The Trump administration discontinued and deprioritized these processes, bringing a halt to years of work designed to heal communities, instill best practices, and improve police accountability. It will take a recommitment to accountability to continue on a path of progress.

➡ **Eliminate private prisons for federal prisoners and immigrant detention.**

The Trump administration has adopted incredibly stringent immigration policies, while emboldening U.S. Immigration and Customs Enforcement and the Border Patrol. These policies have made it easier for immigrant detention and deportation to occur, and have created a structural and financial incentive to use private prisons for more bed capacity. Sessions immediately revoked a prior Obama administration commitment to phase out federal use of private prisons, even with the Department of Justice finding safety concerns and potential human rights violations.⁷ With these measures in place, the average number of immigrants detained on a given day reached a record high of over 50,000 in FY 2019, with 81% of them held in private prisons.⁸ The use of private prisons challenges our ability to house immigrants safely and humanely, and cannot continue.

➔ **Expand Department of Education data collection on youth arrests, on involuntary removals of students as forms of discipline, and on police use of force in schools — and make Civil Rights Data Collection reporting an annual requirement.**

For many people of color, the first interaction with law enforcement comes through their school system. As school officials carry racial biases into the classroom, Black students are more than three times as likely to be suspended or expelled as their white counterparts.⁹ This has a dire impact on school performance, drop-out rates, and future likelihood of arrest and incarceration.¹⁰ Add the dynamic of use of force by police officers, and we have the precepts for the “school-to-prison pipeline.” Regular data collection and transparency provides a strong accountability measure against racially disparate practices.

LEGISLATIVE PRIORITIES

➔ **Eliminate cash bail in the federal criminal justice system and provide incentives for states to end this and other racially biased pretrial practices.**

Cash bail requires people detained in jail to pay money as collateral for freedom until their court date arrives. On any given day in 2020, around 470,000 people were held in local jails across the U.S., and some 74% of them had not been convicted of any crime. Many remained behind bars because they could not afford to pay their bond.¹¹ Even a jail stay of only three days can create collateral consequences that can challenge employment and housing, as well as give prosecutors considerable leverage to pressure plea deals. Bail bond agencies take advantage of this circumstance financially, generating up to \$2.4 billion a year in revenue — largely off the backs of people of color, who are disproportionately arrested by law enforcement.¹² However, poverty is not a crime, and wealth should never determine one’s freedom. Congress can create legal and financial incentives for local officials to find alternatives to cash bail, while still protecting public safety.

➔ **Eliminate barriers for formerly incarcerated people to employment, housing, and voting rights. Prohibit the use of fines and fees that deny the right to fully participate in democracy.**

It is extremely difficult for people returning home from prison to successfully reintegrate into society, especially with barriers to basic needs like employment and housing. According to the National Inventory of Collateral Consequences of Conviction, there are currently 13,871 occupational and professional licensures and certifications that are unavailable to people with a criminal conviction.¹³ Likewise, there are an additional 1,033 restrictions on housing opportunities. Over 5.2

million people have been stripped of their right to vote after their felony conviction — many of whom are forced to pay off court debts before their rights are restored.¹⁴

In the words of one of the Southern Poverty Law Center’s clients who has struggled with re-entry, “I was sentenced and served my time. Since I have been home, it has been a constant struggle to find a job and a place to live. Everywhere I go they ask about my criminal history, and when I have to check that box to say I was once convicted, that’s when they tell me they can’t hire me or approve the housing application. I feel like I’m serving a second sentence.” Without the ability to provide for themselves, acquire safe housing accommodations, or participate in civic engagement, formerly incarcerated people have a higher likelihood of being returned to prison. Legislation can eliminate these barriers, lowering unemployment rates, growing the tax base, and reducing recidivism.

➔ **Prohibit chokeholds and all maneuvers that restrict the flow of blood or oxygen to the brain; require the use of de-escalation techniques; prohibit the use of no-knock warrants; lower the federal standard for holding law enforcement accountable for misconduct and abuse; and end the qualified immunity doctrine that has prevented police from being held accountable.**

In 2020, the country was once again faced with the undeniable reality of lethal police violence against Black people, often with little means of real accountability. The deaths of George Floyd, Breonna Taylor, and others are the latest in a historic pattern of harm from law enforcement and police culture. This forces us to consider if Black lives truly matter in this country, and how to heal communities torn by police brutality. While police culture may not change overnight and become less violent, Congress can enact legislation in the short term to at least provide accountability when harm is caused. Clear expectations to ban chokeholds and no-knock warrants, while promoting stronger de-escalation methods, should be the bare minimum for all officers. Officers that clearly abuse their authority, or are reckless with use of force, should not be able to hide behind the legal protection of qualified immunity, which limits their liability in court.

➔ **Enact legislation designed to divest and reprogram funds from police and mass incarceration, while investing in community infrastructures and better schools.**

For many Americans, law enforcement has been the primary method for ensuring public safety, which is reflected in local budgets and policy. However, throughout history, our criminal justice system has also brought with it a certain level of harm for the very communities it purports to serve. Our country can imagine a new vision of safety that does not rely on armed

police units, bigger jails, and longer prison sentences. Stronger schools and community resources have been shown to reduce crime.¹⁵ Many functions handled by police officers, such as episodes with mental health and substance abuse, could also be addressed with counselors, restorative justice programs, and decriminalizing drug use. Instead, funding goes toward more militarized law enforcement as the greater priority year after year. Congress should approve legislation and funding to support alternatives to law enforcement, while still maintaining safer communities.

➔ **Abolish the federal death penalty and provide incentives to encourage states to end the practice.**

The death penalty is an extremely flawed method of achieving justice. Throughout history, Black people targeted by law enforcement and without the guarantee of a fair trial have disproportionately wound up on death row, currently making up 41% of people facing execution.¹⁶ For states in the Deep South like Alabama, Georgia, Louisiana, and Mississippi, Black people make up over half of the death row population. However, the death penalty is not proven to deter crime. It also comes at a significant cost to the state and potentially brings human rights challenges of being cruel and inhumane. This compounds the reality that some on death row are actually innocent but were not afforded a fair trial. For the 52 people in federal custody currently on death row, the Biden administration can make a statement and impose a less punitive alternative, setting a precedent that states across the U.S. can follow.

EXECUTIVE/CONGRESSIONAL FUNDING PRIORITIES

➔ **Reduce federal law enforcement spending and redirect funds toward social services and efforts to address systemic racism in policing.**

Budgetary decisions are not only statements about money, they are statements about our values and what truly matters to elected officials. However, in a year where Black Lives Matter has been in the forefront, federal budgets have wrongly prioritized investment in more militarized law enforcement over investments in community services. For years, federal programs such as the Byrne Grant and 1033 program have allowed local law enforcement to gain funding and resources that local social service professionals struggle to secure. This prioritizes police funding with no accountability for the systemic racism that may be institutionalized in some police departments. People determining federal appropriations have an opportunity to reverse these patterns and invest in community in ways other than how they are policed.

➔ **Expand funding for educational opportunities and vocational training for incarcerated persons.**

For an incarcerated person, the chance to attain a GED, degree, or vocational certification provides an enormous advantage towards successfully re-integrating into society upon release. At least 95% of all incarcerated people will be released at some point, and will need the opportunity to return home as productive citizens.¹⁷ Studies consistently maintain that investing in prison programming reduces recidivism and increases earning potential,¹⁸ which in turn saves money for taxpayers, and provides more stability to the communities where incarcerated people will resume their lives.¹⁹ Ultimately, funding for classes and training opportunities in prison is an investment in the future of communities already impacted by mass incarceration.

ENDNOTES

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