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COMMENTARY

THE PRESIDENT'S ROLE IN ADVANCING CRIMINAL JUSTICE REFORM

Barack Obama

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THE PRESIDENT'S ROLE IN ADVANCING CRIMINAL JUSTICE REFORM

Barack Obama[*]

INTRODUCTION

Presidencies can exert substantial influence over the direction of the U.S. criminal justice system. Those privileged to serve as President and in senior roles in the executive branch have an obligation to use that influence to enhance the fairness and effectiveness of the justice system at all phases. How we treat citizens who make mistakes (even serious mistakes), pay their debt to society, and deserve a second chance reflects who we are as a people and reveals a lot about our character and commitment to our founding principles. And how we police our communities and the kinds of problems we ask our criminal justice system to solve can have a profound impact on the extent of trust in law enforcement and significant implications for public safety.

Criminal justice reform has been a focus of my entire career — even since before my time at the *Harvard Law Review*. As a community organizer, I saw firsthand how our criminal justice system exacerbates inequality. It takes young people who made mistakes no worse than my own and traps them in an endless cycle of marginalization and punishment. More than twenty years ago, I wrote about my experience in neighborhoods where "prison records had been passed down from father to son for more than a generation."[1] As a state legislator in Illinois, I worked with law enforcement and civil rights leaders to push for reduced sentences, videotaped police interrogations, and other reforms, including legislation in favor of second chances and against racial profiling.[2] As a candidate for President, I called for addressing unwarranted disparities in criminal sentencing, emphasized the harms

[*] President of the United States.

[1] BARACK OBAMA, DREAMS FROM MY FATHER: A STORY OF RACE AND INHERITANCE 252 (2d ed. 2004).

[2] JOHN K. WILSON, BARACK OBAMA: THIS IMPROBABLE QUEST 145 (2008); President Barack Obama, Remarks by the President in Address to the Illinois General Assembly (Feb. 10, 2016), https://www.whitehouse.gov/the-press-office/2016/02/10/remarks-president-address-illinois-general-assembly [https://perma.cc/EH44-ZSN7] (describing professional relationships as a state senator and work on ethics reform and racial profiling issues); *see also* DAVID AXELROD, BELIEVER: MY FORTY YEARS IN POLITICS 140–41 (2015) (describing negotiations over racial profiling bill).

of profiling, and set out new initiatives to help the formerly incarcerated earn second chances.[3]

Throughout my time in office, using an array of tools and avenues, I have pushed for reforms that make the criminal justice system smarter, fairer, and more effective at keeping our communities safe. I have tried to bring that case directly to the American people in a number of unprecedented ways. I sat down in the Oval Office with rank-and-file police officers[4] and saw up close how a new way of policing has brought hope to cities written off for being among the country's most dangerous.[5] As the first sitting President to go inside a federal prison, I heard directly from prisoners and corrections officers.[6] I consoled the families of fallen police officers and the families of children killed by gun violence.[7] I met with men and women battling drug abuse, rehab coaches, and those working on new solutions for treatment.[8] I have sought to reinvigorate the use of the clemency power, commuting more federal sentences than my eleven predecessors combined.[9] I launched programs that have expanded opportunity and

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[3] BARACK OBAMA, THE BLUEPRINT FOR CHANGE: BARACK OBAMA'S PLAN FOR AMERICA 49 (2007), http://www.slideshare.net/USelections/the-blueprint-for-change-barack-obama-s-plan-for-america-presentation [https://perma.cc/6LKD-4VQ9].

[4] *See* Ron Davis, *What 21st Century Policing Means*, WHITE HOUSE: BLOG (Mar. 2, 2015, 4:16 PM), https://www.whitehouse.gov/blog/2015/03/02/what-21st-century-policing-means [https://perma.cc/EXW2-U6N8]; Justin Ray, *New Jersey Officer Meets President Obama,* NBC 10 (Feb. 26, 2015, 1:39 PM), http://www.nbcphiladelphia.com/news/local/New-Jersey-Officer-Canden-President-Obama-Oval-Office-294229141.html [https://perma.cc/ALX6-9NJY].

[5] *See, e.g.*, President Barack Obama, Remarks by the President on Community Policing (May 18, 2015), https://www.whitehouse.gov/the-press-office/2015/05/18/remarks-president-community-policing [https://perma.cc/4VXH-BF3P] (describing how reforms to the police department and other initiatives helped transform "a city trapped in a downward spiral"); *see also* Jim Walsh, *Report: Camden Dangerous, but Crime Down*, COURIER-POST (Feb. 8, 2016, 8:53 PM), http://www.courierpostonline.com/story/news/crime/2016/02/01/camden-neighborhoodscout-crime-dangerous/79649266 [https://perma.cc/TX35-8ZFE] (noting declines in Camden's crime rate).

[6] *See* President Barack Obama, Remarks by the President After Visit at El Reno Federal Correctional Institution (July 16, 2015), https://www.whitehouse.gov/the-press-office/2015/07/16/remarks-president-after-visit-el-reno-federal-correctional-institution [https://perma.cc/5LFX-GM79].

[7] *See* President Barack Obama, Remarks by the President at the 122nd Annual IACP Conference (Oct. 27, 2015), https://www.whitehouse.gov/the-press-office/2015/10/27/remarks-president-122nd-annual-iacp-conference [https://perma.cc/FFE9-KZPD].

[8] *See, e.g.*, President Barack Obama, Remarks by the President at Community Forum at East End Family Resource Center (Oct. 21, 2015), https://www.whitehouse.gov/the-press-office/2015/10/21/remarks-president-community-forum-east-end-family-resource-center [https://perma.cc/534B-GYKC]; Press Release, Office of the Press Sec'y, FACT SHEET: President Obama Announces New Actions to Promote Rehabilitation and Reintegration for the Formerly-Incarcerated (Nov. 2, 2015), https://www.whitehouse.gov/the-press-office/2015/11/02/fact-sheet-president-obama-announces-new-actions-promote-rehabilitation [https://perma.cc/YN4X-7TS8].

[9] *See* Neil Eggleston, *President Obama Grants Another 98 Commutations in the Month of October*, WHITE HOUSE: BLOG (Oct. 27, 2016, 4:00 PM), https://www.whitehouse.gov/blog/2016/10/27/president-obama-grants-another-98-commutations-month-october [https://perma.cc/2LBA-YTQX].

mentoring for young people, including boys and young men of color who disproportionately suffer from our current system's failings. And I signed sentencing reform legislation and met with members of Congress from both parties who share my belief that criminal justice reform is a priority.[10] At the same time, I also made a point of emphasizing the importance of maintaining a strong justice system and underscored how that system depends on public servants who devote their lives to promoting the rule of law and ensuring public safety.[11]

Criminal justice is a complex system, administered at all levels of government and shaped by a range of actors. Thanks to the dedicated efforts of so many in my Administration, the bipartisan push for reform from federal, state, and local officials, and the work of so many committed citizens outside government, America has made important strides. We have reduced overlong sentences for offenders and re-

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[10] *See, e.g.*, Juliet Eilperin & Mike DeBonis, *Obama Convenes Meeting on Criminal Justice Reform to Buoy Bipartisanship*, WASH. POST (Dec. 3, 2015), https://www.washingtonpost.com/politics/bipartisan-criminal-justice-reform-coalition-holds-white-house-meeting/2015/12/03/98cb7dde-99fa-11e5-b499-76cbec161973_story.html [https://perma.cc/8E92-8BDT]; Jordan Fabian, *Obama Huddles with Key Republicans on Criminal Justice Reform*, THE HILL (Feb. 5, 2016), http://thehill.com/blogs/blog-briefing-room/news-other-administration/268427-obama-met-with-grassley-goodlatte-on [https://perma.cc/P4NQ-YRJ9]. In addition to signing the Fair Sentencing Act of 2010, Pub. L. No. 111-220, 124 Stat. 2372 (codified at scattered sections of 21 and 28 U.S.C.), I also signed legislation that helps protect our men and women in uniform who are faced with threats, injuries, and death, *see* Rafael Ramos and Wenjian Liu National Blue Alert Act of 2015, Pub. L. No. 114-12, 129 Stat. 192 (to be codified at 42 U.S.C. §§ 14165–14165b), as well as an important expansion of federal hate-crime laws that covers crimes committed because of a victim's sexual orientation or gender identity, *see* Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act of 2009, Pub. L. No. 111-84, 123 Stat. 2835 (codified at scattered sections of 18, 28, and 42 U.S.C.). *See also* President Barack Obama, Remarks by the President at Signing of the Rafael Ramos and Wenjian Liu National Blue Alert Act of 2015 (May 19, 2015), https://www.whitehouse.gov/the-press-office/2015/05/19/remarks-president-signing-rafael-ramos-and-wenjian-liu-national-blue-ale [https://perma.cc/CT5K-4GCP]; *The Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act of 2009*, U.S. DEP'T JUST. (Aug. 6, 2015), https://www.justice.gov/crt/matthew-shepard-and-james-byrd-jr-hate-crimes-prevention-act-2009-0 [https://perma.cc/9QAX-9G4F].

[11] President Barack Obama, Remarks by the President at the NAACP Conference (July 14, 2015), https://www.whitehouse.gov/the-press-office/2015/07/14/remarks-president-naacp-conference [https://perma.cc/27GZ-7FJM] ("Our communities are safer, thanks to brave police officers and hardworking prosecutors who put those violent criminals in jail."); *see also* Obama, *supra* note 7 ("[Y]our work and your service really has helped make America safer than it's been in decades, and that's something for which every American should be proud."); President Barack Obama, Remarks by the President at Memorial Service for Fallen Dallas Police Officers (July 12, 2016), https://www.whitehouse.gov/the-press-office/2016/07/12/remarks-president-memorial-service-fallen-dallas-police-officers [https://perma.cc/XV64-YHGJ] ("Like police officers across the country, these men and their families shared a commitment to something larger than themselves. They weren't looking for their names to be up in lights. They'd tell you the pay was decent but wouldn't make you rich . . . . [T]he reward comes in knowing that our entire way of life in America depends on the rule of law; that the maintenance of that law is a hard and daily labor; that in this country, we don't have soldiers in the streets or militias setting the rules. Instead, we have public servants — police officers . . . .").

moved barriers for those with criminal records. We have made progress in helping people, especially young people, avoid getting entangled in the justice system in the first place. This Commentary talks about those achievements — and the tools Presidents can use to effect meaningful change throughout the system. And it emphasizes the continuing historic opportunity to make further progress.

Part I details the current criminal justice landscape and emphasizes the urgent need for reform. It would be a tragic mistake to treat criminal justice reform as an agenda limited to certain communities. All Americans have an interest in living in safe and vibrant neighborhoods, in raising their children in a country of equal treatment and second chances, and in entrusting their liberty to a justice system that remains true to our highest ideals. We simply cannot afford to spend $80 billion annually on incarceration, to write off the seventy million Americans — that's almost one in three adults — with some form of criminal record,[12] to release 600,000 inmates each year without a better program to reintegrate them into society, or to ignore the humanity of 2.2 million men and women currently in U.S. jails and prisons[13] and over 11 million men and women moving in and out of U.S. jails every year.[14] In addition, we cannot deny the legacy of racism that continues to drive inequality in how the justice system is experienced by so many Americans.

Part II shows how the President can drive significant reform at the federal level. Working with Congress, my Administration helped secure bipartisan sentencing reform legislation reducing the crack-to-powder-cocaine disparity. As an executive branch, we've been able to make important changes to federal charging policies and practices, the administration of federal prisons, and federal policies relating to reentry. And through the presidential pardon power, I have commuted the sentences of more than 1000 prisoners. Even though there are important structural and prudential constraints on how the President can directly influence criminal enforcement, these changes illustrate that presidential administrations can and do shape the direction of the federal criminal justice system in lasting and profound ways.

Part III details the approaches that Presidents can take to promote change at the state and local level, recognizing that the state and local

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[12] THE SENTENCING PROJECT, AMERICANS WITH CRIMINAL RECORDS 2 (2015), http://www.sentencingproject.org/wp-content/uploads/2015/11/Americans-with-Criminal-Records-Poverty-and-Opportunity-Profile.pdf [https://perma.cc/8E96-WBJV].

[13] *Id.*

[14] Peter Wagner, *Jails Matter. But Who Is Listening?*, PRISON POL'Y INITIATIVE (Aug. 14, 2015), https://www.prisonpolicy.org/blog/2015/08/14/jailsmatter [https://perma.cc/JD33-5F7Q] (compiling data retrieved from the Bureau of Justice Statistics' *Jail Inmates at Midyear Series* 2007–2014).

justice systems tend to have a far broader and more pervasive impact on the lives of most Americans than does the federal justice system. While the President and the executive branch play a less direct role in these systems, there are still opportunities — as my Administration's work demonstrates — to advance reform through a combination of federal-local partnerships, the promulgation of best practices, enforcement, federal grant programs, and assembling reform-minded jurisdictions struggling with similar challenges.

Part IV highlights some of the work that remains, focusing on reforms that are supported by broad consensus and could be completed in the near term. These include passing bipartisan criminal justice reform legislation in Congress, adopting commonsense measures to keep firearms out of the hands of those who are a threat to others or themselves, finding better ways to address the tragic opioid epidemic in this country, implementing critical reforms to forensic science, improving criminal justice data, and using technology to enhance trust in and the effectiveness of law enforcement.

I. THE URGENT NEED FOR REFORM

It's hard to deny the urgent need for reform. In 1980, there were less than half a million inmates in U.S. state and federal prisons and jails.[15] Today, that figure stands at an estimated 2.2 million, more than any other country on Earth.[16] Many people who commit crimes deserve punishment, and many belong behind bars. But too many, especially nonviolent drug offenders, serve unnecessarily long sentences. With just 5% of the world's population, the United States incarcerates nearly 25% of the world's prisoners.[17] We keep more people behind bars than the top thirty-five European countries combined, and our rate of incarceration dwarfs not only other Western allies but also countries like Russia and Iran.[18]

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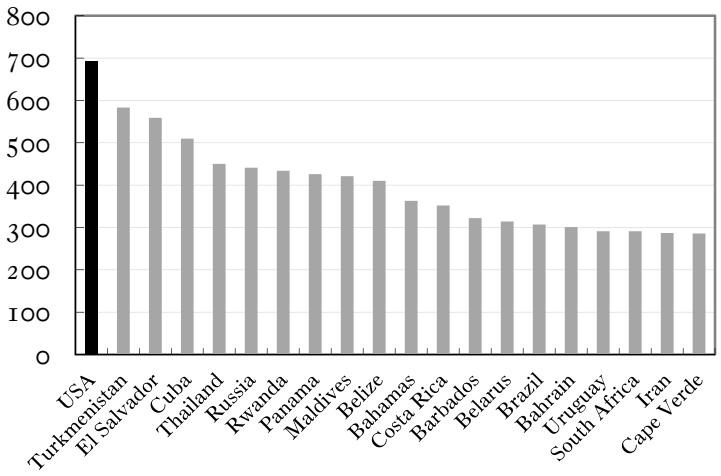
[15] THE SENTENCING PROJECT, FACT SHEET: TRENDS IN U.S. CORRECTIONS 2 (2015), http://sentencingproject.org/wp-content/uploads/2016/01/Trends-in-US-Corrections.pdf [https://perma.cc/9Q5W-7GVG].

[16] *Id.*

[17] WHITE HOUSE COUNCIL OF ECON. ADVISORS, ECONOMIC PERSPECTIVES ON INCARCERATION AND THE CRIMINAL JUSTICE SYSTEM 23 (2016) [hereinafter ECONOMIC PERSPECTIVES ON INCARCERATION], https://www.whitehouse.gov/sites/default/files/page/files/20160423_cea_incarceration_criminal_justice.pdf [https://perma.cc/L7SW-34LH].

[18] PEW CHARITABLE TRS., COLLATERAL COSTS: INCARCERATION'S EFFECT ON ECONOMIC MOBILITY 7 fig.1 (2010), http://www.pewtrusts.org/~/media/legacy/uploadedfiles/pcs_assets/2010/collateralcosts1pdf [https://perma.cc/U6H8-QGB4].

FIGURE 1. INCARCERATION RATE BY COUNTRY, 2016: INMATES PER 100,000 RESIDENTS[19]



There is a growing consensus across the U.S. political spectrum that the extent of incarceration in the United States is not just unnecessary but also unsustainable.[20] And it is not making our communities safer. The federal government spends more than $7 billion a year to house prisoners, nearly a third of the Department of Justice's budget and a figure that crowds out spending on other critical public safety initiatives.[21] As Deputy Attorney General Sally Yates noted recently,

[19] Data obtained from Inst. for Criminal Policy Research & World Prison Brief, *Highest to Lowest — Prison Population Rate*, PRISONSTUDIES.ORG, http://www.prisonstudies.org/highest-to-lowest/prison_population_rate?field_region_taxonomy_tid=All [https://perma.cc/7MGA-RAR7]. This ranking excludes territories and countries with populations of less than 200,000. *See also* ECONOMIC PERSPECTIVES ON INCARCERATION, *supra* note 17, at 24 fig. 18 (compiling the same statistics from 2015).

[20] *See, e.g.*, WILLIAM J. STUNTZ, THE COLLAPSE OF AMERICAN CRIMINAL JUSTICE 13 (2011) ("The consequence of those trends is an unsustainably large prison population, disproportionately composed of young African American men from poor urban neighborhoods.").

[21] *See* Sally Q. Yates, Deputy Att'y Gen., U.S. Dep't of Justice, Deputy Attorney General Sally Q. Yates Delivers McNamara Memorial Lecture at Fordham University (Nov. 14, 2016), https://www.justice.gov/opa/speech/deputy-attorney-general-sally-q-yates-delivers-mcnamara-memorial-lecture-fordham [https://perma.cc/7TGM-6ZZV] ("The Justice Department's prison and detention costs have increased by almost three billion dollars in the past decade alone and now account for roughly one third of the department's budget. This comes with significant public safety consequences because the growing [Bureau of Prisons (BOP)] budget is crowding out everything else we do at the department."); *see also* CHARLES COLSON TASK FORCE ON FEDERAL CORRECTIONS, TRANSFORMING PRISONS, RESTORING LIVES 14 (2016), http://www.urban.org/sites/default/files/alfresco/publication-pdfs/2000589-Transforming-Prisons-Restoring-Lives.pdf [https://perma.cc/R24X-PK2N] ("The BOP's growth and size have created a tremendous financial burden for the federal government, requiring significant investment in basic housing and infrastructure

every dollar that the Department of Justice spends on excessive sentences for nonviolent drug offenses represents "a dollar we don't have for investigating emerging threats, from hackers to home-grown terrorists. And it's a dollar we don't have to support state and local law enforcement with more cops on the street and crucial programs for prevention, intervention and reentry."[22] If one includes the cost of jail and prison at the state and local level, the total U.S. budget for incarceration rises to a staggering $81 billion,[23] enough to fund transformative initiatives like universal preschool for every three- and four-year-old in America[24] — initiatives that can change the odds for so many kids, including by keeping them out of the juvenile and criminal justice systems in the first place.

Total expenditures on incarceration, moreover, only begin to capture the true costs of our flawed approach to criminal justice. An estimated seventy million Americans — roughly a third of the adult population — have some type of criminal record, which can trigger a whole host of stigmas and restrictions, including barriers to employment, voting, education, housing, and public benefits.[25] Each year, more than eleven million Americans cycle in and out of jails,[26] impairing their ability to work and support their families. And in too many communities — especially communities of color and those struggling with poverty and addiction — the justice system has touched almost every family. The costs of maintaining this system are nothing short of breathtaking. We sacrifice billions of taxpayer dollars and waste untold human capital on a system that shuffles too many young people into a pipeline from underfunded schools to overcrowded jails.[27] And

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and leaving few resources for the important work of supporting rehabilitation and successful reentry.").

22 Yates, *supra* note 21.

23 TRACEY KYCKELHAHN, U.S. BUREAU OF JUSTICE STATISTICS, JUSTICE EXPENDITURE AND EMPLOYMENT EXTRACTS, 2012 — PRELIMINARY tbl.1 (2015), http://www.bjs.gov/index.cfm?ty=pbdetail&iid=5239 [https://perma.cc/RH4C-SUJG]; *see also* DIANE WHITMORE SCHANZENBACH ET AL., THE HAMILTON PROJECT, THE BROOKINGS INST., TWELVE FACTS ABOUT INCARCERATION AND PRISONER REENTRY 4 (2016), https://www.brookings.edu/wp-content/uploads/2016/10/thp_20161020_twelve_facts_incarceration_prisoner_reentry.pdf [https://perma.cc/XVB7-AGL6] (estimating total expenditures in 2012 based on U.S. Bureau of Labor Statistics and Bureau of Justice Statistics data); *Does the U.S. Spend $80 Billion a Year on Incarceration?*, COMM. FOR A RESPONSIBLE FED. BUDGET (Dec. 23, 2015), http://crfb.org/blogs/us-spends-80-billion-year-incarceration [https://perma.cc/WN4K-BM4V] (fact-checking a similar estimate from 2010).

24 U.S. DEP'T OF EDUC., STATE AND LOCAL EXPENDITURES ON CORRECTIONS AND EDUCATION 5 exhibit 1 (2016), https://www2.ed.gov/rschstat/eval/other/expenditures-corrections-education/brief.pdf [https://perma.cc/GAJ8-5LVN].

25 ECONOMIC PERSPECTIVES ON INCARCERATION, *supra* note 17, at 45–51 (2016).

26 Wagner, *supra* note 14.

27 *See generally* SARAH E. REDFIELD & JASON P. NANCE, AM. BAR ASS'N, SCHOOL-TO-PRISON PIPELINE: PRELIMINARY REPORT (2016), https://www.americanbar.org/content/dam

even as violent crime has plummeted over the past two decades, the evidence indicates that our massive levels of incarceration have not made us safer.[28]

How we got to this point is a complicated story. The policies of the 1980s and 1990s occurred against a backdrop of criminal activity that was ravaging our communities, especially our poor neighborhoods and communities of color.[29] The push in that period for stricter laws, longer sentences, and more vigilant policing was not limited to one party or one community.[30] Unfortunately, the impact of those policies has been anything but evenly distributed.[31] If we are to chart honestly the path for criminal justice reform, we must confront the role of race and bias in shaping the policies that led us to this point.[32]

/aba/administrative/diversity_pipeline/stp_preliminary_report_final.authcheckdam.pdf [https://perma.cc/2TWQ-LGW2].

[28] *See, e.g.*, Timothy Head & Grover Norquist, *The High Costs of Over-Incarceration,* NAT'L REV. (Aug. 13, 2015, 4:00 AM), http://www.nationalreview.com/article/422476/over-incarceration-not-making-america-safer [https://perma.cc/3S2U-ZHB2]. *See generally* STEVEN RAPHAEL & MICHAEL A. STOLL, DO PRISONS MAKE US SAFER? THE BENEFITS AND COSTS OF THE PRISON BOOM (2009).

[29] *See generally* NAT'L RESEARCH COUNCIL OF THE NAT'L ACADS., THE GROWTH OF INCARCERATION IN THE UNITED STATES 70–103 (2014) [hereinafter GROWTH OF INCARCERATION]. The FBI calculates that the rate of violent crime was 372.6 per 100,000 people in 2015, compared to 469.0 in 2005, 684.5 in 1995, and 620.1 in 1986; the murder and manslaughter rate was 4.9 per 100,000 people in 2015, 5.6 in 2005, 8.2 in 1995, and 8.6 in 1986. *See* FBI, U.S. DEP'T OF JUSTICE, UNIFORM CRIME REPORTS tbl.1 (2015), https://ucr.fbi.gov/crime-in-the-u.s/2015/crime-in-the-u.s.-2015/tables/table-1/table_1_crime_in_the_united_states_by_volume_and_rate_per_100000_inhabitants_1996-2015.xls [https://perma.cc/A4Q2-WM56]; FBI, U.S. DEP'T OF JUSTICE, UNIFORM CRIME REPORTS tbl.1 (2005), https://ucr.fbi.gov/crime-in-the-u.s/2005 [https://perma.cc/5MCS-49AS]; *see also* U.S. BUREAU OF JUSTICE STATISTICS, CRIMINAL VICTIMIZATION, 2015 (2016), http://www.bjs.gov/content/pub/pdf/cv15_sum.pdf [https://perma.cc/XEY8-3QTJ] ("From 1993 to 2015, the rate of violent crime declined from 79.8 to 18.6 victimizations per 1000 persons age 12 or older.").

[30] *See* GROWTH OF INCARCERATION, *supra* note 29, at 70–103; *see also* Rachel E. Barkow, *Clemency and Presidential Administration of Criminal Law*, 90 N.Y.U. L. REV. 802, 819 (2015) ("Elected officials responded to . . . public fear and dissatisfaction [with a 'too lenient' justice system] by taking ever-tougher stances on crime. Republicans embraced the strategy first, but Democrats quickly followed. Key interests have also pushed for more expansive and tougher criminal laws, including prosecutors, victims' rights organizations, rural communities that may depend on prisons for jobs, private prison companies, and corrections unions.").

[31] Bryan Stevenson, a member of my Task Force on 21st Century Policing, has said that under the current justice system, it is often "better if you're rich and guilty than if you're poor and innocent." Bryan Stevenson, *We Need to Talk About an Injustice*, TED (Mar. 2012), https://www.ted.com/talks/bryan_stevenson_we_need_to_talk_about_an_injustice/transcript?language=en [https://perma.cc/UEQ2-YUEK]; *see also* BRYAN STEVENSON, JUST MERCY 18 (2014) ("[T]he opposite of poverty is not wealth; the opposite of poverty is justice.").

[32] For example, studies have suggested no statistically significant difference in the rate of current drug use across races and ethnicities though the arrest and conviction rate for African Americans for drug crimes is significantly higher. *See* U.S. DEP'T OF HEALTH & HUMAN SERVS., RESULTS FROM THE 2013 NATIONAL SURVEY ON DRUG USE AND HEALTH: SUMMARY OF NATIONAL FINDINGS 26 (2014), http://www.samhsa.gov/data/sites/default/files/NSDUHresultsPDFWHTML2013/Web/NSDUHresults2013.pdf [https://perma.cc/LZ4X-MZ38].

It was no accident that the setting for my most expansive public address on this topic was the NAACP.[33] That's because many of the most tragic failings of the justice system are disproportionately felt by communities of color.[34] A large body of research finds that, for similar offenses, members of the African American and Hispanic communities are more likely to be stopped, searched, arrested, convicted, and sentenced to harsher penalties.[35] Rates of parental incarceration are two to seven times higher for African American and Hispanic children.[36] Over the past thirty years, the share of African American adults with a past felony conviction — and who have paid their debt to society — has more than tripled, and one in four African American men outside the correctional system now has a felony record.[37] This number is in addition to the one in twenty African American men under correctional supervision.[38]

The system of mass incarceration has endured for as long as it has in part because of the school-to-prison pipeline and political opposition to reform that insisted on "a stern dose of discipline — more policy, more prisons, more personal responsibility, and an end to welfare."[39] Today, however, much of that opposition has receded, replaced by broad agreement that policies put in place in that era are not a good

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[33] Obama, *supra* note 11.

[34] *Id.*

[35] ECONOMIC PERSPECTIVES ON INCARCERATION, *supra* note 17, at 4; *see also* JESSICA EAGLIN & DANYELLE SOLOMON, BRENNAN CTR. FOR JUSTICE, REDUCING RACIAL AND ETHNIC DISPARITIES IN JAILS 10–13 (2015), https://www.brennancenter.org/sites/default/files/publications/Racial%20Disparities%20Report%20062515.pdf [https://perma.cc/DTZ4-8VBA]; LYNN LANGTON & MATTHEW R. DUROSE, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, POLICE BEHAVIOR DURING TRAFFIC AND STREET STOPS, 2011 (2013), http://www.bjs.gov/content/pub/pdf/pbtss11.pdf [https://perma.cc/Y4X3-XRU6]; THE SENTENCING PROJECT, REPORT OF THE SENTENCING PROJECT TO THE UNITED NATIONS HUMAN RIGHTS COMMITTEE REGARDING RACIAL DISPARITIES IN THE UNITED STATES CRIMINAL JUSTICE SYSTEM 1 (2013), http://sentencingproject.org/wp-content/uploads/2015/12/Race-and-Justice-Shadow-Report-ICCPR.pdf [https://perma.cc/89FU-NUZA]; RAM SUBRAMANIAN ET AL., VERA INST. OF JUSTICE, IN OUR OWN BACKYARD: CONFRONTING GROWTH AND DISPARITIES IN AMERICAN JAILS 12–13 (2015), http://www.safetyandjusticechallenge.org/wp-content/uploads/2015/12/incarceration-trends-in-our-own-backyard-report.pdf [https://perma.cc/HEA4-U6RL]; M. Marit Rehavi & Sonja B. Starr, *Racial Disparity in Federal Criminal Sentences*, 122 J. POL. ECON. 1320 (2014).

[36] ECONOMIC PERSPECTIVES ON INCARCERATION, *supra* note 17, at 5.

[37] *See* Sarah K.S. Shannon et al., *The Growth, Scope, and Spatial Distribution of People with Felony Records in the United States, 1948 to 2010*, DEMOGRAPHY (forthcoming) (manuscript at 25), http://users.soc.umn.edu/~uggen/former_felons_2016.pdf [https://perma.cc/YS3H-EJVN].

[38] *Id.* (manuscript at 26).

[39] BARACK OBAMA, THE AUDACITY OF HOPE 253 (1st ed. 2006); *see also* Am. Psychological Ass'n Zero Tolerance Task Force, *Are Zero Tolerance Policies Effective in the Schools? An Evidentiary Review and Recommendations*, 63 AM. PSYCHOLOGIST 852, 853–54 (2008) (documenting and challenging the "key assumptions of zero tolerance policies").

match for the challenges of today.[40] And even as budgets for social services are under increasing political pressure and our criminal justice system continues to too often serve as the default response for mental illness and addiction, over the past decade, many states — including so-called "red states" like Georgia, Texas, and Alabama — have led and innovated with new approaches. By reducing sentences and reinvesting some of the savings in other public safety initiatives — especially programs that actually address substance abuse and support for those with mental illness — these states have improved outcomes, enhanced trust, and thus ultimately made better use of taxpayer dollars.[41]

For some people, the problems described in this Part will sound familiar. But these issues don't always get the attention they deserve, and they haven't translated into real reform in vast portions of our country.[42] As President, I felt a unique responsibility to highlight the

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[40] *See* LAUREN-BROOKE EISEN & INIMAI CHETTIAR, BRENNAN CTR. FOR JUSTICE, THE REVERSE MASS INCARCERATION ACT 6, 10 (2015), http://www.brennancenter.org/sites/default/files/publications/The_Reverse_Mass_Incarceration_Act%20.pdf [https://perma.cc/W62K-5BK6] (describing state approaches to reducing crime and incarceration); *see also* BRENNAN CTR. FOR JUSTICE, SOLUTIONS: AMERICAN LEADERS SPEAK OUT ON CRIMINAL JUSTICE (Inimai Chettiar & Michael Waldman eds., 2015), http://www.brennancenter.org/sites/default/files/publications/Solutions_American_Leaders_Speak_Out.pdf [https://perma.cc/Q5XX-Y8JX] (compiling proposals for criminal justice reform from bipartisan public leaders); INT'L ASS'N OF CHIEFS OF POLICE, PARTNERSHIPS IN PRETRIAL JUSTICE (2016), http://www.iacp.org/Portals/0/documents/pdfs/IACP_ParnersinPretrialJustice_Final.pdf [https://perma.cc/DC9K-YKTZ] (detailing state efforts to adopt risk-based reforms).

[41] In Georgia, after criminal justice reform in 2012, prison admissions fell 8%, and the violent crime rate dropped to its lowest since 1980. BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, IN BRIEF: EXAMINING THE CHANGING RACIAL COMPOSITION OF THREE STATES' PRISON POPULATIONS 2 (2015), https://www.bja.gov/Publications/CSG-RacialPrisonPop.pdf [https://perma.cc/HUU4-CHCD]; *Statewide Crime Rates per 100,000 Population 1980–2015*, GA. BUREAU INVESTIGATION, https://gbi.georgia.gov/sites/gbi.georgia.gov/files/related_files/site_page/Statewide%20Crime%20Rates%20per%20100,000%20Population.pdf [https://perma.cc/UWM3-RVP8]. In Texas, after reforms in 2007 that reduced sentencing terms for drug offenders, the violent crime rate declined by 20% between 2007 and 2011. *See* Sally Q. Yates, Deputy Att'y Gen., U.S. Dep't of Justice, Remarks at the National District Attorneys Association on Prosecution Integrity (July 21, 2015), https://www.justice.gov/opa/speech/deputy-attorney-general-sally-quillian-yates-delivers-remarks-national-district-attorneys [https://perma.cc/7ULA-RYPZ]. Alabama has had a similar experience. *See* Press Release, Office of the Governor of Ala., Governor Bentley Addresses Congress on Alabama's Prison Reform Efforts (July 14, 2015), http://governor.alabama.gov/newsroom/2015/07/governor-bentley-addresses-congress-alabamas-prison-reform-efforts [https://perma.cc/XDB6-ATYD] ("In 2014, Alabama launched the Justice Reinvestment Initiative (JRI), a comprehensive study of the state's criminal justice system to identify ways to implement more cost effective criminal justice policies. The goal of JRI is to generate state savings that can be reinvested in evidence-based strategies that will increase public safety while holding offenders accountable for crimes. . . . The legislation is expected to reduce the state's prison population by more than 4200 people, avert more than $380 million in future costs and provide supervision for 3000 more people upon release from prison.").

[42] *See, e.g.*, THE SENTENCING PROJECT, LIFE GOES ON: THE HISTORIC RISE IN LIFE SENTENCES IN AMERICA 3, 15–16 (2013), http://sentencingproject.org/wp-content/uploads/2015

compelling economic and policy arguments for justice reform as well as the human toll of a failing system. Through my own actions and the policies of my Administration, I supported evidence-based solutions to these longstanding problems. What's more, unlike so many issues that divide Washington, D.C., criminal justice is an area in which there is increasing bipartisan agreement. A number of Republicans have been vocal and sincere advocates for reform efforts even as they were otherwise frequent critics of my Administration.[43] Buoyed by these bipartisan calls for change, I continue to be confident that we can see meaningful reform in the coming years. But because the current system reflects years of changes and policy developments, I am also clear-eyed about the fact that change will likely happen gradually, with an emphasis on evidence-based reforms and incremental approaches that enjoy broad support.[44]

/12/Life-Goes-On.pdf [https://perma.cc/WG7B-ZF66] (noting that, even amid broad policy reform, there is little debate about the use of and appropriateness of life sentences, and that "[l]ife without parole is a mandatory sentence upon conviction under three strikes laws in 13 states and the federal government," *id.* at 16).

43 Within Congress, the supporters of criminal justice reform include Senators John Cornyn, Mike Lee, and Rand Paul, as well as Congressmen James Sensenbrenner and Trey Gowdy, among others. *See Criminal Justice Reform Initiative*, HOUSE JUDICIARY COMMITTEE, https://judiciary.house.gov/issue/criminal-justice-reform-initiative [https://perma.cc/K6S9-UKUD]; *see also* Seung Min Kim, *Compromise Struck on Criminal Justice Reform*, POLITICO (Apr. 28, 2016, 11:03 AM), http://www.politico.com/story/2016/04/criminal-justice-reform-senate-222577 [https://perma.cc/CGJ2-AGT8]. There are also a host of Left-Right coalitions in this space. Most notably, in 2015, a group called the Coalition for Public Safety launched with a mission "to make our criminal justice system smarter, fairer and more cost effective." *About the Coalition*, COALITION FOR PUB. SAFETY (2015), http://www.coalitionforpublicsafety.org/about [https://perma.cc/Z8G5-BZKB]. The organization partners with many of the nation's most prominent conservative and progressive organizations — including organizations backed by Grover Norquist and the Koch brothers. *See The Importance of Action*, COALITION FOR PUB. SAFETY (2015), http://www.coalitionforpublicsafety.org [https://perma.cc/5DCV-75Y7] (listing partner organizations). On March 27, 2015, the Bipartisan Summit for Criminal Justice Reform brought together more than ninety speakers in Washington, D.C., in an event hosted by Pat Nolan and former Speaker of the House Newt Gingrich, among others. *See* Edgar Saavedra, *A Bipartisan Summit on Criminal Justice Reform*, #CUT50 (Mar. 27, 2015), http://www.cut50.org/summit1 [https://perma.cc/JPK5-QD6Q]. Governor Nathan Deal of Georgia, a state that has led on these issues, spoke at the event about the impact drug courts can have on the lives of those struggling with addiction and seeking to earn their second chance. *See Bipartisan Summit: Georgia Governor Nathan Deal*, YOUTUBE (Mar. 26, 2015), https://www.youtube.com/watch?v=uGa45JNw7kU [https://perma.cc/6FGP-EQSN].

44 President Barack Obama, Remarks by the President in Arm Chair Discussion on Criminal Justice with Law Enforcement Leaders (Oct. 22, 2015), https://www.whitehouse.gov/the-press-office/2015/10/22/remarks-president-arm-chair-discussion-criminal-justice-law-enforcement [https://perma.cc/HR4Q-KN7U] ("[T]his is a staged process. We will lose the public if we try to do everything at once without having data and evidence . . . . If, on the other hand, we do it systematically, methodically, . . . [and] we're not telling prosecutors you're going to be promoted based on how many maximum sentences you get, but rather based on how wise your use of prosecutorial discretion — if all those things prove that we're still doing a good job controlling crime, then I think we've got something to build on.").

II. REFORMING THE FEDERAL CRIMINAL JUSTICE SYSTEM

Every week, I receive letters from people across the country urging me to address issues involving state and local justice systems, about which there is often frustratingly little that anyone in the federal government can do. State and local officials are responsible for most policing issues, and they are in charge of the facilities that hold more than 90% of the prison population and the entire jail population.[45]

Even at the federal level, there are important limits on the President's authority.[46] The Constitution separates the executive, legislative, and judicial powers into three coequal branches of government, all of which have independent roles in shaping the criminal justice system.[47] And within the executive branch, the President's direct influence is subject to constraints designed to safeguard the fair enforcement of the law.

Nowhere are these limits more important than in the administration of the criminal law. For good reason, particular criminal matters are not directed by the President personally but are handled by career prosecutors and law enforcement officials who are dedicated to serving the public and promoting public safety.[48] The President does not and should not decide who or what to investigate or prosecute or when an investigation or prosecution should happen. To avoid even the appearance of politicization, a series of internal White House rules and prudential practices sharply restrict contact with the Department of Justice and other enforcement agencies on specific matters.[49] These practices make things difficult when the public looks to the President to opine on a particular case, but they are critical to ensuring the rule of law as well as the integrity and independence of the justice system.

Nevertheless, there is still much that Presidents can do to make the justice system better serve the public. In my Administration, that has meant starting with the federal system — which has not only directly affected those in federal custody, but also made federal practice a

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[45] Peter Wagner & Bernadette Rabuy, *Mass Incarceration: The Whole Pie 2016*, PRISON POL'Y (Mar. 14, 2016), https://www.prisonpolicy.org/reports/pie2016.html [https://perma.cc/N4WB-4T8C].

[46] "Resolution of prosecutorial questions usually is conceived as lying at the heart of the executive power vested in the President," then-Professor Elena Kagan observed in a seminal article on presidential administration. Elena Kagan, *Presidential Administration*, 114 HARV. L. REV. 2245, 2357 (2001). "But it is in this area, because so focused on particular individuals and firms, that the crassest forms of politics . . . pose the greatest danger of displacing professionalism and thereby undermining confidence in legal decisionmaking." *Id.* at 2357–58.

[47] *See, e.g.*, Rachel E. Barkow, *Separation of Powers and the Criminal Law*, 58 STAN. L. REV. 989, 1017 (2006).

[48] *See* Kate Andrias, *The President's Enforcement Power*, 88 N.Y.U. L. REV. 1031, 1051 (2013).

[49] *See id.* at 1070–72; *see also* Kagan, *supra* note 46, at 2357–58.

model that can drive and accelerate change at the state and local levels. This Part shows how my Administration has used the tools at its disposal to effect change at the federal level: from the legislative reforms we've advanced, to the policies we've changed in the executive branch, to the second chances we've given to those who received clemency, we have brought our system more in line with the values that define us.

A. Achieving Reforms to Federal Charging and Sentencing Practices

Working with Congress and the U.S. Sentencing Commission, my Administration has made reforms to federal charging and sentencing practices. These reforms have allowed us to use our federal criminal laws wisely, reduce excessive sentences, and better ensure that the punishment fits the crime. I have also used my clemency power to a degree unmatched in modern history[50] to address unfairness in the federal system. These changes mean that I will be the first President in decades to leave office with a federal prison population lower than when I took office[51] even as my Administration saw the rate of violent crime fall to its lowest point in decades.[52]

1. Charging Policies and "Smart on Crime." — From the beginning of my Administration, the Department of Justice has made important changes to federal charging policies, starting first and foremost with the "Smart on Crime" initiative begun under Attorney General Eric Holder and continued under Attorney General Loretta Lynch, both of whom were longtime career prosecutors.[53] In 2010, the De-

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[50] *See* Eggleston, *supra* note 9.

[51] *See Past Inmate Population Totals*, FED. BUREAU PRISONS (Dec. 1, 2016), https://www.bop.gov/about/statistics/population_statistics.jsp [https://perma.cc/GZ3R-TSVY] (providing historical inmate totals from 1980 to 2016); *see also* PATRICK A. LANGAN ET AL., BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, HISTORICAL STATISTICS ON PRISONERS IN STATE AND FEDERAL INSTITUTIONS, YEAREND 1925–86, at 12 (1988), https://www.ncjrs.gov/pdffiles1/digitization/111098ncjrs.pdf [https://perma.cc/Y9HS-A24R] (presenting historical data that suggests the last President to see a decrease in the federal inmate population while in office was President Jimmy Carter).

[52] There were historic decreases in violent crime in 2014. While the most recent FBI Uniform Crime Report (UCR) data suggests that crime increased overall in 2015, it is important to remember that 2015 still represented the third-lowest year for violent crime in the past two decades. *See Crime in the United States 2015*, FBI, https://ucr.fbi.gov/crime-in-the-u.s/2015/crime-in-the-u.s.-2015/home [https://perma.cc/WFQ5-55S3]; *Crime in the United States 2014*, FBI, https://ucr.fbi.gov/crime-in-the-u.s/2014/crime-in-the-u.s.-2014 [https://perma.cc/7YB8-P98F].

[53] These actions were undertaken not at my direction, but because of the strong, principled leadership of Eric Holder and Loretta Lynch, the two outstanding Attorneys General who served in my Administration. In many respects, the most consequential actions I took in this area were my decisions to entrust these dedicated public servants (and other senior officials in the Department of Justice) with the authority to use their discretion wisely and to provide guidance and set an example for the thousands of federal prosecutors across the United States. This point is con-

partment reversed a policy requiring prosecutors in every case to bring charges that could result in the most severe possible sentence.[54] The new policy instead instructed that cases should be charged based on the individual circumstances of the defendant, stressing that "[p]ersons who commit similar crimes and have similar culpability should, to the extent possible, be treated similarly," and that "equal justice depends on individualized justice, and smart law enforcement demands it."[55] As part of the Smart on Crime initiative, Holder revised the Department's charging policies to avoid triggering excessive mandatory minimums for low-level, nonviolent drug offenders.[56] Subsequently, the Department of Justice put in place new policies instructing federal prosecutors to no longer use so-called "851" enhancements — which trigger longer sentences based on prior drug convictions — to gain leverage on defendants in plea negotiations[57] and to no longer require, as a part of plea agreements, that defendants waive their right to appeal based on ineffective counsel.[58]

Some warned that these types of reforms would undermine cooperation, making it more difficult to obtain evidence against kingpins and cartel leaders and putting public safety at risk.[59] Now that these

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sistent with recent scholarship that demonstrates the important role prosecutors have played in escalating the length of sentences and can play in easing them. *See, e.g.*, John. F. Pfaff, *The Micro and Macro Causes of Prison Growth*, 28 GA. ST. U. L. REV. 1239, 1242 (2012) (describing the important role county prosecutors have played in prison population growth).

54 Memorandum from Eric Holder, Jr., Att'y Gen., U.S. Dep't of Justice, to All Federal Prosecutors (May 19, 2010), http://subjecttoinquiry.default.wp1.lexblog.com/files/2013/09/Holder-Charging-Memo-5-19-10.pdf [https://perma.cc/D599-RPVA]; *see id.* at 3 ("This memorandum supersedes previous Department guidance on charging and sentencing including the September 22, 2003 memorandum issued by Attorney General John Ashcroft . . . , the July 2, 2004 memorandum issued by Deputy Attorney General James Comey . . . and the January 28, 2005 memorandum issued by Deputy Attorney General James Comey . . . .").

55 *Id.* at 1.

56 *See* Memorandum from Eric Holder, Jr., Att'y Gen., U.S. Dep't of Justice, to the United States Attorneys & Assistant Attorney General for the Criminal Division 1 (Aug. 12, 2013), https://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/ag-memo-department-policypon-charging-mandatory-minimum-sentences-recidivist-enhancements-in-certain-drugcases.pdf [https://perma.cc/9UMG-B3L9]. A footnote in the memo notes that "[a]s with every case, prosecutors should determine, as a threshold matter, whether a case serves a substantial federal interest. In some cases, satisfaction of the . . . criteria [for declining to charge under a mandatory minimum statute] meant for low-level, nonviolent drug offenders may indicate that prosecution would not serve a substantial federal interest and that the case should not be brought federally." *Id.* at 2 n.3.

57 Memorandum from Eric Holder, Jr., Att'y Gen., U.S. Dep't of Justice, to Department of Justice Attorneys (Sept. 24, 2014), https://www.justice.gov/oip/foia-library/ag_guidance_on_section_851_enhancements_in_plea_negotiations/download [https://perma.cc/VWW7-9CCK].

58 Memorandum from James M. Cole, Deputy Att'y Gen., U.S. Dep't of Justice, to All Federal Prosecutors (Oct. 14, 2014), https://www.justice.gov/file/70111/download [https://perma.cc/V772-EVBU].

59 *See, e.g.*, NAT'L ASS'N OF ASSISTANT U.S. ATT'YS, THE DANGEROUS MYTHS OF DRUG SENTENCING "REFORM" 10–11 (2015), https://www.naausa.org/2013/images/docs/Dangerous-Myths-of-Drug-Sentencing-Reform.pdf [https://perma.cc/FZ8D-H8W9] (predicting

changes have been in place for several years, however, it has become increasingly clear that the opposite is true: since Smart on Crime was announced, federal prosecutors have used mandatory minimums more carefully, and the result has been a focus on more serious cases and more significant offenders.[60] In other words, the Department is better able to prioritize and devote resources where they matter most. In 2013, we saw the first reduction in the federal prison population in thirty-three years,[61] a trend that has continued in the years since.[62] The proportion of drug offenders convicted of an offense carrying a mandatory minimum penalty is now the lowest it has been since 1993.[63] Yet despite the fears of some, defendants are pleading guilty at the same rates as they were before Smart on Crime, and cooperation rates have at least been stable, and may have even slightly increased.[64]

2. Sentencing Reform Legislation. — Any lasting, broad-based reform to federal sentencing can only be addressed through legislation. That's why I've consistently called on Congress to pass bipartisan sentencing reform and build on the progress we've made in recent years. In August 2010, I signed the Fair Sentencing Act[65] (FSA), which reduced the disparity in the amounts of powder cocaine and crack cocaine required for the imposition of mandatory minimum sentences and eliminated the mandatory minimum sentence for simple posses-

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that lower mandatory minimums would inhibit a prosecutor's ability to dismantle criminal organizations); Letter from Robert Gay Guthrie, President, Nat'l Ass'n of Assistant U.S. Att'ys, to Senator Patrick Leahy, Chairman, and Senator Charles Grassley, Ranking Member, Senate Judiciary Comm. (Jan. 31, 2014), http://www.naausa.org/2013/images/docs/MandMinSentencingLegOppose013114.pdf [https://perma.cc/ZSX5-3QBU].

60 *See* Press Release, Office of Pub. Affairs, U.S. Dep't of Justice, New Smart on Crime Data Reveals Federal Prosecutors Are Focused on More Significant Drug Cases and Fewer Mandatory Minimums for Drug Defendants (Mar. 21, 2016), https://www.justice.gov/opa/pr/new-smart-crime-data-reveals-federal-prosecutors-are-focused-more-significant-drug-cases-and [https://perma.cc/67U4-6Z2N] (noting that "the percentage of defendants with an aggravating role steadily increased" while the number of drug cases with mandatory minimums has fallen).

61 *See* BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, CORRECTIONAL POPULATIONS IN THE UNITED STATES, 2013 (2014), http://www.bjs.gov/content/pub/pdf/cpus13.pdf [https://perma.cc/2FQ2-T48B].

62 *See* BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, CORRECTIONAL POPULATIONS IN THE UNITED STATES, 2014, at 2 (2015), http://www.bjs.gov/content/pub/pdf/cpus14.pdf [https://perma.cc/VG8R-PPQR].

63 *See* U.S. SENTENCING COMM'N, OVERVIEW OF FEDERAL CRIMINAL CASES FISCAL YEAR 2015, at 7–8 (2016), http://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2016/FY15_Overview_Federal_Criminal_Cases.pdf [https://perma.cc/BY29-6H87]. The U.S. Sentencing Commission attributed this significant reduction to "a change in the policy of the Department of Justice in 2013 as to how to charge drug cases." *Id.* at 8; *id.* at 12 n.8 (providing data from fiscal years 2013 and 2014).

64 *See* Yates, *supra* note 21.

65 Pub. L. No. 111-220, 124 Stat. 2372 (2010) (codified as amended in scattered sections of 21 and 28 U.S.C.).

sion of crack cocaine.[66] In doing so, the FSA reduced a disparity between crack cocaine and powder cocaine that had resulted in excessive and unwarranted punishments that fell disproportionately on defendants of color.[67] Beyond its specific impact, passage of this bill demonstrated that it was possible for Congress to come together on a bipartisan basis and pass reforms that reduced excessive federal sentences and gave additional support to the efforts of the Department of Justice and the U.S. Sentencing Commission to do the same.

One promising proposal in my second term was the Smarter Sentencing Act,[68] an ambitious bipartisan bill that advanced out of the Judiciary Committee by a significant margin.[69] Introduced in 2013 by Senators Dick Durbin and Mike Lee, and supported by a bipartisan group of twenty-five Senators including Ted Cruz and Cory Booker, the bill included provisions that would have reduced but not eliminated mandatory minimum sentences for certain nonviolent drug offenses — from twenty years to ten years, ten years to five years, and five years to two years.[70] The bill would also have eliminated mandatory life imprisonment for a drug crime and enlarged eligibility for "safety valve" relief for certain drug offenders (which allows judges to make exceptions to otherwise applicable mandatory minimums[71]) and would have made the FSA retroactive.[72] The Congressional Budget Office scored this bill as potentially saving taxpayers as much as $4 billon over ten years, funds that could be reallocated from prisons to other public safety measures.[73] Despite broad support, the bill was viewed skeptically by some Republicans and was not brought to the floor.[74]

Encouragingly, the following year, even as the Senate shifted to Republican control, cooperation across party lines on this issue continued in search of an alternative. I met several times at the White House with Democrats and Republicans from the House and the Senate who are dedicated to these issues. The culmination of these efforts

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[66] *Id.* § 3 (codified at 21 U.S.C. § 844(a) (2012)).

[67] *Restoring Fairness to Federal Sentencing: Addressing the Crack-Powder Disparity: Hearing Before the Subcomm. on Crime & Drugs of the S. Comm. on the Judiciary*, 111th Cong. 2–3 (2009) (Statement of Sen. Richard J. Durbin, Chairman, S. Subcomm. on Crime & Drugs).

[68] Smarter Sentencing Act of 2014, S. 1410, 113th Cong.; *see also* Smarter Sentencing Act of 2015, S. 502, H.R. 920, 114th Cong. (a similar bill introduced in 2015).

[69] S. 1410.

[70] *Id.* § 4.

[71] *Id.* § 2.

[72] *Id.* § 3(b).

[73] CONG. BUDGET OFFICE, COST ESTIMATE, S. 1410 SMARTER SENTENCING ACT OF 2014 (Sept. 11, 2014), https://www.cbo.gov/sites/default/files/113th-congress-2013-2014/costestimate/s141000.pdf [https://perma.cc/8ETY-KHS9].

[74] *See, e.g.*, 161 CONG. REC. S1378–80 (daily ed. Mar. 10, 2015) (statement of Sen. Grassley); 160 CONG. REC. S4449–50 (daily ed. July 14, 2014) (statement of Sen. Grassley); 159 CONG. REC. S6511–13 (daily ed. Sept. 17, 2013) (statement of Sen. Grassley).

was the Sentencing Reform and Corrections Act of 2015,[75] a bill voted out of the Senate Judiciary Committee by a strong, bipartisan majority. (A largely parallel set of proposals later advanced in the House with broad support.[76]) While not going as far on mandatory minimum reform as the Smarter Sentencing Act would have, the bill still would have reduced mandatory minimum prison sentences for thousands of nonviolent drug offenders[77] and also would have made the sentencing changes in the FSA retroactive.[78] Moreover, it would have helped current prisoners turn their lives around by offering "credits" for participating in certain beneficial programming while incarcerated, which could have enabled inmates to leave prison earlier (and go into home confinement or halfway houses).[79] In addition, and reflecting a sustained focus on juvenile justice by Senator Booker, among others, the bill would have provided new authority for judges to seal and expunge the records of nonviolent juvenile offenders.[80] By reducing overlong sentences, moreover, the bill would have freed up additional resources available for investments in other public safety initiatives, including additional resources for law enforcement.

Some on the Hill and in the advocacy community were initially disappointed that the proposed legislation did not go further. But the bill would have made the system fairer for thousands of inmates and defendants and saved more than $1 billion in the process.[81] As I often tell my team, "better is good." So even though the bill was imperfect — in particular, it did too little to address the five-year mandatory minimum for drug offenses that can often be a source of excessive and counterproductive punishment — we were convinced that it represented a historic step forward. Senior officials from the Department of Justice supported the legislation in strong terms,[82] and my team worked to push it forward. The legislation ultimately garnered the support of everyone from Families Against Mandatory Minimums[83] to

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[75] S. 2123, 114th Cong.

[76] H.R. 3713, 114th Cong. (2015).

[77] *See* S. 2123 § 101.

[78] *See id.* § 106.

[79] *Id.* § 202(a)(6)(A).

[80] *Id.* § 211.

[81] *See* CONG. BUDGET OFFICE, COST ESTIMATE, S. 2123 SENTENCING REFORM AND CORRECTIONS ACT OF 2015 (2016), https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/costestimate/s2123-r.pdf [https://perma.cc/RF8A-W6PJ] (estimating cost savings of over $1 billion over ten years).

[82] *See, e.g.*, *Sentencing Reform and Corrections Act of 2015: Hearing on S. 2123 Before the S. Comm. on the Judiciary*, 114th Cong. (2015) (statement of Sally Quillian Yates, Deputy Att'y Gen., U.S. Dep't of Justice).

[83] *See* Press Release, Families Against Mandatory Minimums, Senate Judiciary Committee Approves the Sentencing Reform and Corrections Act (Oct. 22, 2015), http://famm.org/senate

the bipartisan Coalition for Public Safety,[84] the International Association of Chiefs of Police,[85] the Major County Sheriffs' Association,[86] the National District Attorneys Association,[87] civil rights organizations, faith organizations, and over 160 influential law enforcement leaders.[88]

Although the reform bills appeared to have majority support in the Congress, including among many conservatives, Republican leaders have not yet allowed them to come to the floor for a vote.[89] Nevertheless, I continue to believe that a historic moment exists to embrace the bipartisan momentum on this issue. There is no growing crime wave. We should all be able to agree that our resources are better put toward underfunded schools than overfilled jails and that many of those in our criminal justice system would be better and more humanely served by drug treatment programs and the receipt of mental health care. That kind of reform is good politics as well as good policy.

-judiciary-committee-approves-the-sentencing-reform-and-corrections-act [https://perma.cc/T7LH-GQL7].

84 Press Release, Coal. for Pub. Safety, Statement by Deputy Director Jessica Berry on Senate Judiciary Committee Approval of Sentencing Reform and Corrections Act (Oct. 23, 2015), http://www.coalitionforpublicsafety.org/statement-by-deputy-director-jessica-berry-on-senate-judiciary-committee-approval-of-sentencing-reform-and-corrections-act [https://perma.cc/G9QA-FH89]. Members and funders of the Coalition for Public Safety include the American Civil Liberties Union (ACLU), Americans for Tax Reform, the Center for American Progress, the Faith and Freedom Coalition, the Ford Foundation, Freedom Works, Koch Industries, Inc., the Laura and John Arnold Foundation, the Leadership Conference Education Fund, the MacArthur Foundation, the NAACP, and Right on Crime. *About the Coalition*, *supra* note 43.

85 Press Release, Int'l Ass'n of Chiefs of Police, IACP Announces Support for the Sentencing Reform and Corrections Act (May 11, 2016), http://www.iacp.org/ViewResult?SearchID=2658 [https://perma.cc/YF3G-759G].

86 Letter from Michael J. Bouchard, Vice President of Gov't Affairs, Major Cty. Sheriffs' Ass'n, to Mitch McConnell, Majority Leader, U.S. Senate, and Harry Reid, Democratic Leader, U.S. Senate (May 11, 2016), http://www.mcsheriffs.com/pdf/news/mcsa_support_s_2123_sentencing_reform_and_corrections_act.pdf [https://perma.cc/KC95-Q7EJ].

87 Letter from William Fitzpatrick, President, Nat'l Dist. Att'ys Ass'n, to Mitch McConnell, Majority Leader, U.S. Senate, and Harry Reid, Democratic Leader, U.S. Senate (Apr. 26, 2016), http://www.ndaa.org/pdf/NDAA%20Support%20Letter%20on%20Sentencing%20Reform%20and%20Corrections%20Act.pdf [https://perma.cc/HC99-FA78].

88 *See* Letter from Ronal Serpas, Co-Chairman, Law Enf't Leaders to Reduce Crime & Incarceration, et al., to Mitch McConnell, Majority Leader, U.S. Senate, et al. (Jan. 20, 2016), http://lawenforcementleaders.org/wp-content/uploads/2016/01/Law-Enforcement-Leaders-SCRA-Letter-of-Support.pdf [https://perma.cc/SJ3M-JLNU] (signed by over seventy leaders of law enforcement agencies on behalf of a group that represents more than 160 law enforcement leaders).

89 Despite broad support, there was vocal opposition from some while others pushed for the reform legislation to be paired with proposals such as mens rea reform that could undermine public safety and harm progressive goals. *See, e.g.*, James Hohmann, *Why Criminal Justice Reform May Actually Get Done This Year — If These Two Hurdles Can Be Overcome*, WASH. POST: THE DAILY 202 (May 9, 2016), https://www.washingtonpost.com/news/powerpost/paloma/daily-202/2016/05/09/daily-202-why-criminal-justice-reform-may-actually-get-done-this-year-if-these-two-hurdles-can-be-overcome/572ff07c981b92a22d6c6553/?utm_term=.269814bf1714 [https://perma.cc/SM5Z-LA2L] (describing the "uphill battle" facing legislation in Congress despite broad support in Congress and from outside organizations).

B. Advancing Federal Prison Reforms

We've also been able to make progress on helping to rehabilitate those in the federal prison system — which not only improves lives but also promotes public safety. One important step in that direction is how we approached reforming policies on "restrictive housing," a practice more commonly described as solitary confinement.[90] It is estimated that as many as 100,000 inmates in U.S. prisons are currently held in solitary confinement — a figure that includes juveniles and people with mental illness.[91] Of these, as many as 25,000 are in long-term solitary confinement, which involves months if not years with almost no human contact.[92] I believe strongly that solitary confinement is overused and can be counterproductive.[93] Studies suggest it can have profound negative consequences, exacerbating mental illness and undermining the goals of rehabilitation.[94] That is why in 2015, I directed my Attorney General to review the use of restrictive housing[95] and in January 2016, I directed DOJ to implement important reforms — including a series of concrete "guiding principles" — to the way that solitary confinement is used in the federal prison system.[96] These reforms include banning solitary confinement for juveniles, prohibiting its use as a response to low-level infractions, expanding treatment of those with mental illness, increasing the amount of time inmates spend out of their cells, and ensuring inmates are not released into communities directly from solitary confinement.[97] These steps will affect almost 10,000 federal prisoners — and are expected to serve as a model for

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[90] OFFICE OF THE DEPUTY ATT'Y GEN., U.S. DEP'T OF JUSTICE, REPORT AND RECOMMENDATIONS CONCERNING THE USE OF RESTRICTIVE HOUSING 6 (2016), https://www.justice.gov/dag/file/815551/download [https://perma.cc/R8SR-QZRH].

[91] ASS'N OF STATE CORR. ADM'RS, TIME-IN-CELL: THE ASCA LIMAN 2014 NATIONAL SURVEY OF ADMINISTRATIVE SEGREGATION IN PRISON 3 (2015), https://www.law.yale.edu/system/files/area/center/liman/document/asca-liman_administrativesegregationreport.pdf [https://perma.cc/M9L2-PSTU].

[92] Barack Obama, Opinion, *Why We Must Rethink Solitary Confinement*, WASH. POST (Jan. 25, 2016), https://www.washingtonpost.com/opinions/barack-obama-why-we-must-rethink-solitary-confinement/2016/01/25/29a361f2-c384-11e5-8965-0607e0e265ce_story.html?utm_term=.de37d0e6dfoe [https://perma.cc/3Y3V-XUMS].

[93] *Id.*

[94] *Id.*; *see also* Davis v. Ayala, 135 S. Ct. 2187, 2210 (2015) (Kennedy, J., concurring) ("[R]esearch still confirms what this Court suggested over a century ago: Years on end of near-total isolation exact a terrible price." (citing Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 WASH. U. J.L. & POL'Y 325 (2006))).

[95] Press Release, Office of the Press Sec'y, FACT SHEET: Department of Justice Review of Solitary Confinement (Jan. 25, 2016), https://www.whitehouse.gov/the-press-office/2016/01/25/fact-sheet-department-justice-review-solitary-confinement [https://perma.cc/G27J-XB9A].

[96] *Id.*

[97] *Id.*

state and local facilities.[98] In addition, DOJ is working to encourage states to reduce their use of solitary confinement.[99]

Since those reforms were announced, we have seen others follow suit. Of particular note, the American Correctional Association issued new standards in August 2016 that mirror many of DOJ's guiding principles.[100] Earlier this year, the Los Angeles Board of Supervisors approved sweeping restrictions on the use of solitary confinement for juveniles, using language from DOJ's guiding principles.[101] In July 2016, the Nebraska Department of Correctional Services enacted a new regulation prohibiting the use of restrictive housing as a disciplinary sanction.[102] In September 2016, the North Carolina Department of Public Safety enacted a policy limiting the use of restrictive housing for inmates with mental illness and banning its use for youthful offenders.[103] We are hopeful that these changes will continue to accelerate as it becomes clear that they promote better outcomes and also better comport with our values.

While restrictive housing is an important example, the Department of Justice has focused on reforming federal prisons on a variety of fronts. This has included a critical reform directing the Federal Bureau of Prisons (BOP) to reduce and ultimately end the Agency's use of private for-profit prisons, facilities that not only resulted in worse conditions for prisoners but were also found to be less safe and not to yield meaningful cost savings.[104]

These reforms have also included a new emphasis on prison education and on working toward reentry. Studies have shown that inmates

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98 Obama, *supra* note 92.

99 *See generally* OFFICE OF THE DEPUTY ATT'Y GEN., *supra* note 90.

100 RESTRICTIVE HOUS. COMM, AM. CORR. ASS'N, RESTRICTIVE HOUSING PERFORMANCE BASED STANDARDS (2016), http://www.aca.org/ACA_Prod_IMIS/ACA_Member/Standards___Accreditation/Standards/Restrictive_Housing_Committee/ACA_Member/Standards_and_Accreditation/Restrictive_Housing_Committee/Restrictive_Housing_Committee.aspx?hkey=458418a3-8c6c-48bb-93e2-b1fcbca482a2 [https://perma.cc/4G4J-Q5TM].

101 CTY. OF L.A. BD. OF SUPERVISORS, MEETING TRANSCRIPT OF THE LOS ANGELES COUNTY BOARD OF SUPERVISORS (2016), http://file.lacounty.gov/SDSInter/bos/sop/transcripts/243452_050316C.PDF [https://perma.cc/CED4-N5M3]; *see also* Abby Sewell & Garrett Therolf, *L.A. County Severely Restricts Solitary Confinement for Juveniles,* L.A. TIMES (May 3, 2016), http://www.latimes.com/local/lanow/la-me-ln-juvenile-solitary-20160503-story.html [https://perma.cc/M8W6-PWGZ].

102 72 NEB. ADMIN. CODE § 83-173.03 (2016).

103 *See* Rose Hoban, *Ending Solitary for Juveniles, Prison Commissioner Cites Use of Evidence-Based Alternatives*, N.C. HEALTH NEWS (June 21, 2016), http://www.northcarolinahealthnews.org/2016/06/21/ending-solitary-for-juveniles-prison-commissioner-cites-use-of-evidence-based-alternatives [https://perma.cc/9BU8-XGBL].

104 Sally Q. Yates, *Phasing Out Our Use of Private Prisons*, U.S. DEP'T JUST.: JUST. BLOGS, (Aug. 18, 2016), https://www.justice.gov/opa/blog/phasing-out-our-use-private-prisons [https://perma.cc/6SPA-65RR]; *see also* OFFICE OF THE INSPECTOR GEN., U.S. DEP'T OF JUSTICE, REVIEW OF THE FEDERAL BUREAU OF PRISON'S MONITORING OF CONTRACT PRISONS (2016), https://oig.justice.gov/reports/2016/e1606.pdf [https://perma.cc/D73V-36QA].

who participate in correctional education programs have significantly lower odds of returning to prison than those who do not, and that every dollar spent on prison education saves four to five dollars on the cost of reincarceration.[105] As a result, in 2016, the Department of Justice announced that BOP was building a semiautonomous school district within the federal prison system — one that blends face-to-face classroom instruction with education software on mobile tablets.[106] At the same time, BOP has been developing standardized, evidence-based programs to reduce recidivism, focusing on the core behavioral, mental health, and substance abuse issues that give rise to criminality.[107]

Additionally, in 2016, the Department of Justice led an Administration-wide, inaugural "National Reentry Week"[108] during which Attorney General Lynch released the Roadmap to Reentry, a strategic plan for overhauling the federal prison system to reduce recidivism and improve outcomes for the formerly incarcerated.[109] Subsequently, the department released a memo from Deputy Attorney General Yates on reforms to residential reentry centers, popularly known as "halfway houses," including creating new, more exacting standards, improving data collection, and covering the cost of obtaining state-issued IDs for inmates prior to their release from custody.[110] In addition to improving outcomes for those leaving prison, these types of reforms represent a good use of resources to promote public safety.

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[105] LOIS M. DAVIS ET AL., RAND CORP., EVALUATING THE EFFECTIVENESS OF CORRECTIONAL EDUCATION: A META-ANALYSIS OF PROGRAMS THAT PROVIDE EDUCATION TO INCARCERATED ADULTS (2013), https://www.bja.gov/Publications/RAND_Correctional-Education-Meta-Analysis.pdf [https://perma.cc/77HC-G538] ("[O]n average, inmates who participated in correctional education programs had 43 percent lower odds of recidivating than inmates who did not. . . . This translates into a reduction in the risk of recidivating of 13 percentage points for those who participate in correctional education programs versus those who do not." (emphasis omitted)).

[106] Press Release, Office of Pub. Affairs, U.S. Dep't of Justice, Justice Department Announces Reforms at Bureau of Prisons to Reduce Recidivism and Promote Inmate Rehabilitation (Nov. 30, 2016), https://www.justice.gov/opa/pr/justice-department-announces-reforms-bureau-prisons-reduce-recidivism-and-promote-inmate [https://perma.cc/3QL7-7AQR].

[107] *Prison Reform: Reducing Recidivism by Strengthening the Federal Bureau of Prisons*, U.S. DEP'T JUST., https://www.justice.gov/prison-reform (last updated Dec. 2, 2011) [https://perma.cc/WZB3-377E].

[108] *National Reentry Week: April 24–30, 2016*, U.S. DEP'T JUST., https://www.justice.gov/reentry/reentry-week [https://perma.cc/8KZL-WUUW].

[109] U.S. DEP'T OF JUSTICE, ROADMAP TO REENTRY (2016), https://www.justice.gov/reentry/file/844356/download [https://perma.cc/7TWY-N7PG].

[110] Memorandum from Sally Q. Yates, Deputy Att'y Gen., U.S. Dep't of Justice, to Thomas R. Kane, Acting Dir., Fed. Bureau of Prisons (Nov. 30, 2016), https://www.justice.gov/dag/page/file/914051/download [https://perma.cc/S9LA-YUS5].

C. Focusing on Reentry

Beyond prison and sentencing reform, we need to do more as a country to help people who have served their time put their lives back on track. Not only is it the right thing to do, but giving former inmates the tools they need to lead law-abiding lives is also a direct investment in public safety. This is an area where the federal government can and should lead the way, and it is only growing in importance. Even as the national prison population has leveled off, the population of those with a felony record outside prison has reached almost 20 million.[111] Studies suggest that this number represents over 6% of adults and over 25% of African American men, and these figures do not include those with misdemeanors or with felony records who are on bail or parole.[112] The obstacles to this population finding gainful employment, obtaining public benefits, pursuing higher education, and reintegrating into the workforce are staggering. This means millions of Americans have difficulty even getting their foot in the door to try to get a job, much less actually hanging onto that job. That doesn't just deprive those individuals of opportunity, it deprives businesses of talented workers, and it deprives communities in desperate need of more role models who are gainfully employed.

Attorney General Holder started, and Attorney General Lynch has continued, a cabinet-level working group on reentry.[113] The group brings all relevant departments and agencies to the table to support the government's work on the rehabilitation and reintegration of individuals returning to their communities from prisons and jails.[114] And in April 2016, I signed a Memorandum formally establishing that group as the "Federal Interagency Reentry Council" to ensure its important work continues.[115] This group continues to work tirelessly to address needlessly harsh collateral consequences that make it difficult for the formerly incarcerated to get a fair chance.[116] For example, the Office of Personnel Management finalized a rule to "ban the box" —

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111 JAMES ELWELL, AMY FRIEDER, NIRUPAMA RAO & AARON SOJOURNER, COUNCIL OF ECON. ADVISERS, NEW ESTIMATES OF POPULATIONS AFFECTED BY CRIMINAL JUSTICE BY STATE, RACE, AND YEAR 2 (2016).

112 *Id.*

113 Press Release, Office of the Press Sec'y, Presidential Memorandum — Promoting Rehabilitation and Reintegration of Formerly Incarcerated Individuals (Apr. 29, 2016), https://www.whitehouse.gov/the-press-office/2016/04/29/presidential-memorandum-promoting-rehabilitation-and-reintegration [https://perma.cc/CNW5-WPPD].

114 *Id.*

115 *Id.*

116 *See generally* FED. INTERAGENCY REENTRY COUNCIL, A RECORD OF PROGRESS AND A ROADMAP FOR THE FUTURE (2016), https://csgjusticecenter.org/wp-content/uploads/2016/08/FIRC-Reentry-Report.pdf [https://perma.cc/VD3G-ZHL2] (describing work of the Federal Interagency Reentry Council in its first five years).

which would prohibit federal agencies from asking questions about criminal and credit history of applicants for tens of thousands of jobs in the competitive service, as well as the career senior executive service, until a conditional offer of employment has been made.[117] The Department of Housing and Urban Development released guidance on the use of criminal records by providers of housing and guidance for public housing authorities.[118] The guidance explained that a criminal-history screening policy may violate the Fair Housing Act[119] if it disproportionately excludes individuals of a particular race or other protected characteristic and is not shown to be necessary to achieve a substantial, legitimate, nondiscriminatory purpose that could not be served by a less discriminatory alternative.[120] The Department of Education has emphasized the importance of going "beyond the box" in college applications — because unnecessarily broad questions about criminal history can often deter and discourage qualified students from pursuing a college degree.[121]

Because change at the federal level is not nearly enough, Presidents should also serve as conveners, helping to foster change in the private and educational sectors. That is why the White House launched its "Fair Chance Business Pledge"[122] and "Fair Chance Higher Education Pledge."[123] The business pledge calls on employers to commit to reduce barriers to a second chance by taking actions such as "banning the box," ensuring information regarding an applicant's criminal record is considered in the proper context, and engaging in hiring practices that do not unnecessarily place jobs out of reach for those with criminal records.[124] Over 300 companies and organizations that em-

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117 Beth Colbert, *"Banning the Box" in Federal Hiring*, OFF. OF PERSONNEL MGMT.: DIRECTOR'S BLOG (Apr. 29, 2016), https://www.opm.gov/blogs/Director/2016/4/29/Banning-the-Box-in-Federal-Hiring [https://perma.cc/9G9N-L2DX].

118 HELEN R. KANOVSKY, U.S. DEP'T OF HOUS. & URBAN DEV., OFFICE OF GENERAL COUNSEL GUIDANCE ON APPLICATION OF FAIR HOUSING ACT STANDARDS TO THE USE OF CRIMINAL RECORDS BY PROVIDERS OF HOUSING AND REAL ESTATE–RELATED TRANSACTIONS (2016), http://portal.hud.gov/hudportal/documents/huddoc?id=HUD_OGCGuidAppFHAStandCR.pdf [https://perma.cc/5JC7-FZP7].

119 42 U.S.C. §§ 3601–3619 (2012).

120 KANOVSKY, *supra* note 118.

121 U.S. DEP'T OF EDUC., BEYOND THE BOX: INCREASING ACCESS TO HIGHER EDUCATION FOR JUSTICE-INVOLVED INDIVIDUALS 4 (2016), https://www2.ed.gov/documents/beyond-the-box/guidance.pdf [https://perma.cc/TCQ5-GD8U].

122 Press Release, Office of the Press Sec'y, FACT SHEET: White House Launches the Fair Chance Business Pledge (Apr. 11, 2016), https://www.whitehouse.gov/the-press-office/2016/04/11/fact-sheet-white-house-launches-fair-chance-business-pledge [https://perma.cc/W6QJ-RK6B].

123 Press Release, Office of the Press Sec'y, FACT SHEET: White House Launches the Fair Chance Higher Education Pledge (June 10, 2016), https://www.whitehouse.gov/the-press-office/2016/06/10/fact-sheet-white-house-launches-fair-chance-higher-education-pledge [https://perma.cc/JLE9-RND8].

124 Press Release, *supra* note 122.

ploy well over five million people have taken this pledge, including Walmart, Intel, PepsiCo, Google, American Airlines, CVS Health, Koch Industries, Starbucks, the Hershey Company, the Johns Hopkins Hospital and Health System, and the University of Pennsylvania.[125] The education pledge encourages colleges and universities to commit to taking action to reduce barriers to a fair shot at a second chance, especially through expanding educational opportunity.[126] To date, sixty-one higher education institutions representing 172 individual campuses serving over 1.8 million students have signed on.[127] Our hope is that this kind of public-private effort will be a model not only for future administrations, but also for state and local leaders who are trying to address these issues.

D. Reinvigorating Clemency

Through considering grants of clemency to individuals in the federal system, the President gains a unique vantage point into the fairness of federal sentences. While not a substitute for the lasting change that can be achieved by passage of legislation, the clemency power represents an important and underutilized tool for advancing reform. The Framers gave the President this authority to remedy individual cases of injustice,[128] and the Supreme Court has made clear that this power is entrusted to the President's discretion, unimpeded by congressional limits.[129]

At one point in our nation's history, it was a power used frequently — for example, on average 222 times per year between 1885 and 1930.[130] In large measure, clemency during this period functioned

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[125] *See* Press Release, Office of the Press Sec'y, FACT SHEET: White House Announces New Commitments to the Fair Chance Business Pledge and Actions to Improve the Criminal Justice System (Nov. 30, 2016), https://www.whitehouse.gov/the-press-office/2016/11/30/fact-sheet-white-house-announces-new-commitments-fair-chance-business [https://perma.cc/EMF7-KPAV] ("Today's signatories to the Fair Chance Business Pledge bring the total number of pledged employers to over 300."); Press Release, Office of the Press Sec'y, FACT SHEET: White House Announces New Commitments to the Fair Chance Business Pledge (Aug. 16, 2016), https://www.whitehouse.gov/the-press-office/2016/08/16/fact-sheet-white-house-announces-new-commitments-fair-chance-business [https://perma.cc/7WW7-EBPL]; Press Release, *supra* note 122.

[126] Press Release, *supra* note 123.

[127] Press Release, U.S. Dep't of Educ., FACT SHEET: White House Announces New Commitments to Fair Chance Higher Education Pledge (Sept. 14, 2016), http://www.ed.gov/news/press-releases/fact-sheet-white-house-announces-new-commitments-fair-chance-higher-education-pledge [https://perma.cc/86AV-3LQS].

[128] The Pardon Clause vests the President with "Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment." U.S. CONST. art. II, § 2, cl. 1.

[129] *See* United States v. Klein, 80 U.S. (13 Wall.) 128, 147 (1871) ("To the executive alone is intrusted the power of pardon; and it is granted without limit."); *see also Ex parte* Garland, 71 U.S. (4 Wall.) 333, 380 (1866) ("This power of the President is not subject to legislative control.").

[130] *See* Barkow, *supra* note 30, at 814.

more akin to parole.[131] By the end of the 1930s, a new system of federal parole had displaced clemency as the primary means of releasing prisoners before the end of their sentences, and the number of clemency grants declined.[132] The tough-on-crime rhetoric of the 1980s and the political push in that period for "truth in sentencing," however, ushered in an era in which a power already in decline fell largely into disuse.[133] From 1990 to 2008, the number of federal prosecutions rose dramatically as did (predictably) the number of clemency requests.[134] And yet the number of clemency petitions granted continued to fall in absolute numbers as well as in percentage terms.[135] As one scholar recounted, by the time I took office clemency grant rates had "plummeted to such low levels that . . . it ha[d] become 'hard to tell what distinguishe[d] the handful of lucky winners from the thousands of disappointed suitors'; in the end, the process seem[ed] to 'operate[] like a lottery.'"[136]

That's why I asked my team to look more systematically at how clemency could be used to address particularly unjust sentences in individual cases. This led to an unprecedented effort to identify the types of inmates who deserve particular consideration for clemency — and to encourage individuals who have demonstrated good behavior in the federal system to seek clemency if they were sentenced under outdated laws that have since been changed and are no longer appropriate to accomplish the legitimate goals of sentencing.[137]

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131 *See id.*

132 *See* Margaret Colgate Love, *The Twilight of the Pardon Power*, 100 J. CRIM. L. & CRIMINOLOGY 1169, 1188–89 (2010).

133 *Cf. Clemency Statistics*, U.S. DEP'T JUST., http://www.justice.gov/pardon/statistics.htm (last updated Oct. 28, 2016) [https://perma.cc/W5DW-YBTX] (outlining the number of clemency petitions received and granted in each Administration beginning with President William McKinley).

134 *See id.* (indicating the number of petitions for pardons rose from 206 to 555 and the number for commutations from 148 to 1770).

135 *See* Barkow, *supra* note 30, at 818.

136 *Id.* (quoting Love, *supra* note 132, at 1201–02 (third alteration in original)).

137 Under the initiative, DOJ prioritizes clemency applications from inmates who meet all of the following factors:

> (1) They are currently serving a federal sentence in prison and, by operation of law, likely would have received a substantially lower sentence if convicted of the same offense(s) today; (2) They are non-violent, low-level offenders without significant ties to large scale criminal organizations, gangs or cartels; (3) They have served at least 10 years of their prison sentence; (4) They do not have a significant criminal history; (5) They have demonstrated good conduct in prison; and (6) They have no history of violence prior to or during their current term of imprisonment.

Clemency Initiative, U.S. DEP'T JUST., https://www.justice.gov/pardon/clemency-initiative (last updated Jan. 13, 2016) [https://perma.cc/S5V2-N4UA].

As of this writing, I have commuted the sentences of over 1000 individuals — more than the previous eleven Presidents combined.[138] The vast majority of those commutation recipients had already served far more time than the sentence they would receive today, and 342 were serving life sentences.[139] Each of them earned a second chance — whether by obtaining a GED, taking vocational programming to learn skills for future employment, or addressing the substance abuse that so often had led to their criminal conduct.

This is an effort that has touched me personally, and not just because I could have been caught up in the system myself had I not gotten some breaks as a kid. In March 2016, I met in the Roosevelt Room of the White House with five commutation recipients from three different Presidents.[140] While these men and women had very different life experiences, they told remarkably similar stories about receiving clemency.

One, Ramona Brant, was convicted of involvement in a conspiracy to distribute crack and cocaine. Her boyfriend led the conspiracy, and as she later described it, maintained "emotional control [and] physical control" over her through tragic and sometimes violent abuse.[141] Although prosecutors offered her a plea deal that carried a reduced sentence, Ramona proceeded to trial and was found guilty. Her Sentencing Guidelines range, which at the time was mandatory, was life imprisonment. The judge in Ramona's case had no choice but to impose a life sentence even though Ramona was a first-time offender, and he candidly conceded "that it would be counterproductive for society to keep [Ramona] in prison for the rest of [her] life."[142] Ramona's case is in many ways emblematic of the problems with overly harsh mandatory sentences in the federal system.

Another clemency story that will stay with me involves a defendant (whose name I will withhold) convicted over a decade ago of conspiracy to transport drugs seized from his car. Because of the way the defendant was charged and his two prior drug convictions, the judge in his case had no choice but to sentence him to a term of life imprisonment. After his commutation was announced in the summer of 2016, the district judge who presided over the criminal case wrote me a

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138 *A Nation of Second Chances: President Obama's Record on Clemency*, WHITE HOUSE (Nov. 22, 2016), https://www.whitehouse.gov/issues/clemency [https://perma.cc/RZ5S-AHTD].

139 *Id.*

140 *See* Neil Eggleston, *President Obama Has Now Commuted the Sentences of 348 Individuals*, WHITE HOUSE (June 3, 2016, 3:30 PM), https://www.whitehouse.gov/blog/2016/03/30/president-obama-has-now-commuted-sentences-348-individuals [https://perma.cc/THV7-779N].

141 Casey Tolan, *How a First-Time Drug Charge Became a Life Sentence for this Mother of Two*, FUSION (Dec. 10, 2015, 11:18 AM), http://fusion.net/story/243253/ramona-brant-life-sentence-drug-charge [https://perma.cc/9D8C-97JT].

142 *Id.*

heartfelt and gracious note. The life sentence that he had been obligated to impose on that defendant had haunted him for years, he told me, and the commutation finally eased his conscience.

It is stories like these that are at the heart of the clemency initiative. In recent years, granting clemency has been perceived as a politically risky decision. By shifting the narrative to the way clemency can be used to correct injustices in the system — and reminding people of the value of second chances — I worked to reinvigorate the clemency power and to set a precedent that will make it easier for future Presidents, governors, and other public officials to use it for good.[143] These actions are no substitute for achieving lasting changes to federal sentencing law through legislation, but they are a way to restore a degree of justice, fairness, and proportionality to the system.

III. TOOLS AND ACTIONS TO DRIVE STATE AND LOCAL REFORMS

As important as it is to reform the federal criminal justice system, doing so will not address the much broader challenges in our state and local systems — as mentioned above, states and localities oversee most policing, as well as 90% of the prison population. That is why I've been so committed to finding ways to encourage continued state and local government ingenuity and to highlight those state reforms that should be models for others to follow.[144] Not every solution to these issues can or should be mandated by the federal government. Instead, we have focused on using other levers of the federal government — such as grants[145] and other funding incentives,[146] promulgating guide-

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[143] I also wanted to set an example of how, working with other partners, it is possible to give clemency recipients the support they need to take full advantage of a second chance. *See* Terry Nagel, *Stanford Law School Announces Prisoner Reentry Program to Support White House Clemency Initiative*, STAN. L. SCH. (Dec. 18, 2015), https://law.stanford.edu/press/stanford-law-school-announces-prisoner-reentry-program-to-support-white-house-clemency-initiative [https://perma.cc/J2V4-DM94].

[144] *See, e.g.*, *National Forum on Youth Violence Prevention*, OFF. JUST. PROGRAMS, http://ojp.gov/newsroom/youthviolenceforum.htm [https://perma.cc/F4AQ-6GHD] (designed to reduce youth violence and gang activity); *U.S. Department of Justice's Violence Reduction Network*, OFF. JUST. PROGRAMS, https://www.bja.gov/Programs/VRN.html [https://perma.cc/KDF9-F5KU] (linking police departments with federal resources in some of the country's most violent cities).

[145] In 2015, after numerous meetings with local governments, law enforcement, and advocates, DOJ updated its Byrne Memorial Justice Assistant Grant (JAG) Accountability Measures to better ensure success-oriented funding. *See* Denise E. O'Donnell, *New JAG Accountability Measures: Encouraging Success*, OFF. JUST. PROGRAMS: OJP BLOG (July 30, 2015), https://ojp.gov/ojpblog/Byrne.htm [https://perma.cc/E3NA-W3SS]. Byrne JAG funding is the "largest source of federal assistance for state, local, and tribal criminal justice programs." *Id*. Through the updates, the Bureau of Justice Assistance (BJA) asked grantees for data on how they are applying evidence-based approaches and how they are involving the community in their work. *Id.* In addition, BJA removed "perceived and unintended incentives, such as arrest counts, which are not a true measure of success." *Id.*

lines and best practices,[147] establishing communities of reform-minded jurisdictions,[148] enforcement from the Department of Justice in the case of violations of civil rights and other federal law,[149] and my own use of the bully pulpit[150] — to draw attention to the need for reform.

During my time in office, we have seen many states make important strides on a host of issues — from sentencing reform to policing reform to expanding alternatives to incarceration for addiction and mental illness. These include states such as Oklahoma, Georgia, and Texas in which Republican governors and legislatures have been vocal proponents of promising and important reforms.[151] Given that the vast majority of Americans who interact with the justice system do so at the state and local levels, it is critical that this kind of bipartisan leadership continues and that states continue to demonstrate ways that others (including, at times, the federal government) can strive to achieve better outcomes.

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146 *E.g.*, Press Release, Office of the Press Sec'y, *supra* note 8 ("The Department of Education will award up to $8 million . . . to 9 communities for the purpose of supporting educational attainment and reentry success for individuals who have been incarcerated.").

147 *E.g.*, Memorandum from Elaine Kaplan, Acting Dir., U.S. Office of Pers. Mgmt., to Chief Human Capital Officers (May 15, 2013), http://www.cdse.edu/documents/toolkits-psa/opm-contractor-fitness-guidance.pdf [https://perma.cc/9EPE-QRNV] (providing a best-practices guide that "addresses employment fitness adjudication for contractor applicants and employees who support Federal agencies").

148 *E.g.*, Press Release, Office of the Press Sec'y, FACT SHEET: Enhancing the Fairness and Effectiveness of the Criminal Justice System (July 14, 2015), https://www.whitehouse.gov/the-press-office/2015/07/14/fact-sheet-enhancing-fairness-and-effectiveness-criminal-justice-system [https://perma.cc/V7DX-X8AR].

149 *See* Vanita Gupta, Head of the Civil Rights Div., U.S. Dep't of Justice, Remarks at the Howard University School of Law Annual Wiley A. Branton Symposium (Oct. 14, 2016), https://www.justice.gov/opa/speech/head-civil-rights-division-vanita-gupta-delivers-remarks-howard-university-school-law [https://perma.cc/FB8Q-22YP].

150 *E.g.*, President Barack Obama, Remarks by the President on Criminal Justice Reform (Nov. 2, 2015), https://www.whitehouse.gov/the-press-office/2015/11/02/remarks-president-criminal-justice-reform [https://perma.cc/LT2P-H9C2].

151 *E.g.*, Greg Bluestein, *Georgia to Embark on New Phase of Criminal Justice Reform*, AJC.COM (Apr. 27, 2016), http://politics.blog.ajc.com/2016/04/27/georgia-to-embark-on-new-phase-of-criminal-justice-reform [https://perma.cc/Q3EQ-HWSS] ("The overhaul started in [Governor] Deal's first term with changes that allowed Georgia to push more nonviolent offenders toward alternative programs and away from expensive prison beds and gave judges more discretion to depart from mandatory sentences. The second part involved similar legislation that's aimed at keeping young offenders out of juvenile lockups who were convicted of drug crimes and other nonviolent offenses."); *see also* Dick DeVos, *Smart Justice Reforms Find Unlikely Ally in Business Community*, DET. FREE PRESS (Dec. 1, 2016, 9:44 PM), http://www.freep.com/story/opinion/contributors/2016/12/01/michigan-parole-reform/94075318 [https://perma.cc/SXB7-ZF7S] ("Gov. Rick Snyder energized the audience when he was asked about the prospects for justice reform, stating that supporting tough-on-crime rhetoric that would see many prisoners serve more time is 'the dumbest thing you can do.'").

A. Advancing Policing Reform

Police officers are the heroic backbone of our communities. They hold significant civic and law enforcement responsibilities and put their lives at risk to protect us each day, at times facing some of the most adverse circumstances imaginable. As I have emphasized time and again, the overwhelming majority of police officers are fair, dedicated, and honest public servants who strive daily to cultivate and sustain positive relationships with the communities they serve and protect.[152] Yet, as many tragic events in my presidency have illustrated, there are still too many places in America where these relationships are strained and where officers and community members have struggled to build and maintain trust.

Social science research has found that trust — and a general belief that "police and court procedures are in accord with people's sense of a fair process" — plays a central role in improving police-community relations and ultimately motivates people to lead law-abiding lives.[153] We need to do more as a country to build trust so that when the next incident occurs that captures national attention, there is a sense that it will be handled fairly — and that it is not representative of the way the police and the community interact.

That's why in December 2014, in the wake of events in Ferguson, Cleveland, and New York City, we launched the Task Force on 21st Century Policing to identify best practices and offer recommendations on how law enforcement agencies can promote effective crime reduc-

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[152] *See, e.g.*, Press Release, Office of the Press Sec'y, Statement by the President on the Shooting of Police Officers in Des Moines, Iowa (Nov. 2, 2016), https://www.whitehouse.gov/the-press-office/2016/11/02/statement-president-shooting-police-officers-des-moines-iowa [https://perma.cc/E79V-TZVJ] ("All across the country, our police officers go to work each day not knowing whether they'll come home at night. Their families live each day with the same fears. So as Americans, we owe them our respect and gratitude for their efforts to safeguard our families and our communities."); Obama, *supra* note 7 ("It's why so many of you wear the badge. Every day, you risk your lives so that the rest of us don't have to. You serve and protect to provide the security so many Americans take for granted. And, by the way, your families serve alongside you."); *see also* Melanie Garunay, *President Obama Awards the Medal of Valor to 13 Public Safety Officials* (May 16, 2016, 6:47 PM), https://www.whitehouse.gov/blog/2016/05/16/president-obama-awards-medal-valor-13-public-safety-officials [https://perma.cc/SDN7-VCTH] ("The men and women who run toward danger remind us with your courage and humility what the highest form of citizenship looks like. When you see students and commuters and shoppers at risk, you don't see these civilians as strangers. You see them as part of your own family, your own community. The Scripture teaches us, you love your neighbor as yourself. And you put others' safety before your own. In your proud example of public service, you remind us that loving our country means loving one another.").

[153] *See* TOM R. TYLER & YUEN HUO, TRUST IN THE LAW, at xiv (2002); *see also* Wesley G. Skogan & Tracey L. Meares, *Lawful Policing*, ANNALS AM. ACAD. POL. & SOC. SCI., May 2004, at 66; Jason Sunshine & Tom R. Tyler, *The Role of Procedural Justice and Legitimacy in Shaping Public Support for Policing*, 37 LAW & SOC'Y REV. 513, 535 (2003); Tom R. Tyler, *Procedural Justice, Legitimacy, and the Effective Rule of Law*, 30 CRIME & JUST. 283 (2003).

tion while ensuring the public's trust in our institutions.[154] Members included civil rights leaders, youth leaders, law enforcement leaders, academics, and rank-and-file officers. In a report issued in May 2015, the Task Force outlined a series of recommendations for law enforcement agencies.[155] I was heartened by the seriousness with which the members of the Task Force approached their work. Despite drawing from different backgrounds, the Task Force unanimously came together behind one platform.[156]

The report is too extensive to describe fully here, but it laid out a concrete blueprint for reform. It recommended steps for transparency,[157] including having police collect and make available information about stops, arrests, and other encounters;[158] steps to maintain trust, including policies and procedures for policing mass demonstrations that prioritize de-escalation and avoid provocative tactics;[159] steps to ensure police forces better reflect the communities they serve,[160] including strategies to achieve a diverse workforce and a proposal for the federal government to sponsor a diversity initiative;[161] steps to promote accountability, including an emphasis on independent investigations of incidents and a hard look at expanding civilian oversight;[162] steps to address implicit bias,[163] including through the types of training programs now provided by the Department of Justice to federal prose-

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[154] David Hudson, *President Obama Creates the Task Force on 21st Century Policing*, WHITE HOUSE: BLOG (Dec. 18, 2014, 5:28 PM), https://www.whitehouse.gov/blog/2014/12/18/president-obama-creates-task-force-21st-century-policing [https://perma.cc/T8KC-HGS8].

[155] PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING, FINAL REPORT OF THE PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING (2015) [hereinafter 21ST CENTURY TASK FORCE REPORT], https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf [https://perma.cc/TQ2Q-FRM9].

[156] *Id.*

[157] *Id.* at 12.

[158] *Id.* at 13 (recommending that law enforcement agencies "regularly post on the department's website information about stops, summonses, arrests, reported crime, and other law enforcement data aggregated by demographics").

[159] *Id.* at 25 (endorsing practices such as engaging in respectful conversations with demonstrators).

[160] *Id.* at 51–52 (advising basing hiring decisions "on both educational achievements and socialization skills," *id.* at 51 — qualifications that look not only at race, but also more importantly at "character traits that support fairness, compassion, and cultural sensitivity," *id.* at 52).

[161] *Id.* at 16–17 (suggesting that the diversity initiative should "evaluate and assess diversity among law enforcement agencies around the country and issue public reports on national trends" in order to "improve the diversity as well as the cultural and linguistic responsiveness of law enforcement agencies," *id.* at 17).

[162] *Id.* at 26 (urging continued research "to find evidence-based practices to implement successful civilian oversight mechanisms").

[163] *Id.* at 10.

cutors and law enforcement agents;[164] steps to institute policies prohibiting racial profiling,[165] just like we did across the federal government;[166] steps to reach out to at-risk youth, including creating opportunities in schools and communities for positive, nonconfrontational interactions with police;[167] smarter ways to integrate new technologies, like social media, to enhance public trust and public safety;[168] approaches to better keep our officers safe, including equipping all officers with individual tactical first-aid kits and antiballistic vests;[169] strategies to promote mental and physical officer wellness;[170] and creation of a "Blue Alert" warning system to enlist the public's help in locating suspects when a law enforcement officer is harmed in the line of duty.[171]

While the Task Force laid out specific recommendations for actions the federal government could take to advance the ball, most of its recommendations were directed at the 18,000 state, local, tribal, and other nonfederal law enforcement agencies in our country. To move those ideas forward at every level, I directed my team to adopt the Task Force's federal recommendations and to work with state and local jurisdictions across the country to ensure the entire report was put into action. Since that time, we have worked with communities across the

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164 Memorandum from Sally Q. Yates, Deputy Att'y Gen., U.S. Dep't of Justice, to All Department Law Enforcement Agents and Prosecutors (June 27, 2016), https://www.justice.gov/opa/file/871116/download [https://perma.cc/K8NM-695T].

165 21ST CENTURY TASK FORCE REPORT, *supra* note 155, at 28.

166 *See* Press Release, U.S. Dep't of Justice, Attorney General Holder Announces Federal Law Enforcement Agencies to Adopt Stricter Policies to Curb Profiling (Dec. 8. 2014), https://www.justice.gov/opa/pr/attorney-general-holder-announces-federal-law-enforcement-agencies-adopt-stricter-policies-0 [https://perma.cc/A2V8-GGVM] ("U.S. Attorney General Eric Holder announced Monday that the Justice Department will take new steps to bar profiling by federal law enforcement agencies, building upon a 2003 policy that had previously only addressed the consideration of race and ethnicity in conducting federal investigations. The new policy will address the use of other characteristics as well [as race and ethnicity] — including national origin, gender, gender identity, religion, and sexual orientation — and applies a uniform standard to all law enforcement, national security, and intelligence activities conducted by the Department's law enforcement components.").

167 21ST CENTURY TASK FORCE REPORT, *supra* note 155, at 20 (describing, as an example, the Los Angeles Police Department's Community Safety Partnership, which sends officers into housing projects "*not* to make arrests but to create partnerships, create relationships, hear the community, and see what they need — and then work together to make those things happen").

168 *Id.* at 32–33 (citing, as an example, the Boston Police Department's use of Twitter in its investigation following the Boston Marathon bombing).

169 *Id.* at 66 (noting that these first-aid kits are designed to save lives by controlling hemorrhaging and that they would cost less than $50 each and require two hours of training).

170 *Id.* at 61.

171 *Id.* at 63 (noting that while similar warning systems exist on the state level, there were gaps that a national system could help fill). On May 19, 2015, I signed the Rafael Ramos and Wenjian Liu National Blue Alert Act of 2015, Pub. L. No. 114-12, 129 Stat. 192 (to be codified at 42 U.S.C. §§ 14165–14165b), which provides for the creation of such a system, adding that the bill "represent[ed] . . . the best of a bipartisan support for law enforcement." Obama, *supra* note 10.

United States to encourage them to adopt these reforms.[172] The Department of Justice put over $100 million in grants toward Task Force–related projects. In addition to outreach by my Attorney General and others on my team, we brought nearly 1400 officers to the White House from over 900 jurisdictions to ensure the Task Force's message was directly reaching communities across the country.[173]

While that was happening, we took an important step, working closely with law enforcement and civil rights organizations, to reform the various federal programs that provide equipment (and funding for equipment) to state and local law enforcement agencies. A review had found that the federal government lacked consistent policies regarding what types of equipment could be provided with taxpayer dollars and under what conditions.[174] In light of the potential of military-style equipment to undermine community trust, my Administration put in place a series of safeguards to strengthen accountability and enhance transparency of programs that provide such equipment while at the same time ensuring we were meeting the needs of law enforcement.[175] This included creating federal government–wide lists of "prohibited" and "controlled" items that apply across all such programs.[176]

B. Eliminating the Criminalization of Poverty

Another sustained focus of my Administration has been on addressing excessive fines and fees, inadequate legal representation, the imposition of excessive bail, and other egregious abuses in too many state and local justice systems that Attorney General Lynch has argued

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[172] *See* PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING, ONE-YEAR PROGRESS REPORT 9–16 (2016), https://cops.usdoj.gov/pdf/taskforce/TaskForce_Annual_Report.pdf [https://perma.cc/6WZR-9394].

[173] Jerry Abramson, *Bringing Our Nation's Law Enforcement Officials Together for a Conversation on Community Policing*, WHITE HOUSE: BLOG (Aug. 10, 2016, 11:30 AM), https://www.whitehouse.gov/blog/2016/08/10/bringing-our-nations-law-enforcement-officials-together-conversation-community [https://perma.cc/P6L3-ZQA9] (describing where these efforts stood as of August 2016).

[174] *See* EXEC. OFFICE OF THE PRESIDENT, REVIEW: FEDERAL SUPPORT FOR LOCAL LAW ENFORCEMENT EQUIPMENT ACQUISITION 3–5 (2014), https://www.whitehouse.gov/sites/default/files/docs/federal_support_for_local_law_enforcement_equipment_acquisition.pdf [https://perma.cc/V7N7-UVNW].

[175] The new policies we put in place reflected the recommendations of a working group — led by the Departments of Justice, Defense, and Homeland Security — that completed an extensive review of federal programs that support the acquisition of equipment by state, local, and tribal law enforcement agencies. *See* LAW ENF'T EQUIP. WORKING GRP., RECOMMENDATIONS PURSUANT TO EXECUTIVE ORDER 13688: FEDERAL SUPPORT FOR LOCAL LAW ENFORCEMENT EQUIPMENT ACQUISITION 6–9 (2015), http://ojp.gov/docs/LE-Equipment-WG-Final-Report.pdf [https://perma.cc/GG4P-48WM].

[176] *Id.* at 11–16.

"amount to nothing less than the criminalization of poverty."[177] These practices destroy trust, deprive our fellow Americans of their fundamental rights, and have too often led to a two-tiered system in which the poor are not accorded the equal protection under the laws to which they are entitled under the U.S. Constitution. We should all be able to agree that the justice system should never be used as a source of revenue. Even in a time of budget shortages, there is simply no excuse for the proliferation of "user fees"[178] that charge defendants — innocent or guilty — for everything from paperwork to legal representation, consigning those who cannot afford to pay to a cycle of debt, incarceration, and prolonged poverty. I agree with Attorney General Lynch that this is "an unconscionable state of affairs in a nation that outlawed debtors' prisons in 1833."[179]

The most glaring example, but by no means an outlier, is what the Department of Justice found in its investigation into the Ferguson Police Department.[180] The city used its justice system as a cash register, imposing steep fines for a range of minor offenses, including $302 for jaywalking and $531 for untended lawns.[181] These fines were most often enforced against African American community members.[182] Those who did not or (more often) could not pay found themselves facing ever-escalating penalties and even jail time, destroying the community's faith in the justice system and law enforcement.[183] Research collected by my Council of Economic Advisers has shown that these kinds of barriers have profoundly negative economic consequences (including ultimately costing the jurisdictions more money) and undermine public safety.[184]

In keeping with these findings, the Department of Justice and the rest of my Administration have made it a priority to prevent these

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[177] Loretta Lynch, Att'y Gen., U.S. Dep't of Justice, Remarks at the Eighth Annual Judge Thomas A. Flannery Lecture (Nov. 15, 2016), https://www.justice.gov/opa/speech/attorney-general-loretta-e-lynch-delivers-remarks-eighth-annual-judge-thomas-flannery [https://perma.cc/SQF5-GNZQ].

[178] *Id.*

[179] *Id.*

[180] *See* CIVIL RIGHTS DIV., U.S. DEP'T OF JUSTICE, INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 52 (2015), https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf [https://perma.cc/LR7F-Q6DF].

[181] *Id.*; *see also* Lynch, *supra* note 177.

[182] CIVIL RIGHTS DIV., *supra* note 180, at 62–63.

[183] *Id.* at 54–62.

[184] *See* ECONOMIC PERSPECTIVES ON INCARCERATION, *supra* note 17, at 45 (noting that the crime-reducing impact of increasing incarceration is lower than the benefits that accrue from investments in police, education, and jobs programs); OFFICE OF ECON. POLICY ET AL., OCCUPATIONAL LICENSING: A FRAMEWORK FOR POLICYMAKERS 8 (2015), https://www.whitehouse.gov/sites/default/files/docs/licensing_report_final_nonembargo.pdf [https://perma.cc/W4AP-BLB6].

types of financial obligations from undercutting a defendant's opportunity to have a fair day in court and from interfering with the reintegration into society of those with criminal convictions. The Department of Justice launched the Office for Access to Justice (ATJ) in March 2010 with a mission "to help the justice system efficiently deliver outcomes that are fair and accessible to all, irrespective of wealth and status."[185] The White House hosted a convening of bipartisan thought leaders from around the country to raise attention to this set of issues.[186] The Department of Justice issued guidance to state governments advising of the constitutionality of fees and fines.[187] And finally, my Administration is providing support to local communities wishing to reform their justice system so that they do not rely on fees and fines for revenue.[188] But these steps are only the beginning.[189] States and communities must continue to examine their own policies so that they do not criminalize poverty.

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[185] *About the Office*, U.S. DEP'T JUST. (Sept. 29, 2016), https://www.justice.gov/atj/about-office [https://perma.cc/5RAF-BEQ5]. To address deficiencies in our indigent defense and civil legal aid system, ATJ has pursued a variety of strategies to improve the justice system for those unable to afford lawyers. This has included filing statements of interest to support access-to-justice litigation, *see Court Filings in Support of Access to Justice*, U.S. DEP'T JUST., https://www.justice.gov/atj/court-filings-support-access-justice (last updated Nov. 18, 2016) [https://perma.cc/6KGM-2ZGH], and the creation, discussed *infra* note 189, of a federal interagency roundtable committed to increasing access to civil legal services, *see* WHITE HOUSE LEGAL AID INTERAGENCY ROUNDTABLE, EXPANDING ACCESS TO JUSTICE, STRENGTHENING FEDERAL PROGRAMS 5 (2016), https://www.justice.gov/atj/page/file/913981/download [https://perma.cc/4JTN-Z463].

[186] Press Release, Office of Pub. Affairs, U.S. Dep't of Justice, Fact Sheet on White House and Justice Department Convening — A Cycle of Incarceration: Prison, Debt and Bail Practices (Dec. 3, 2015), https://www.justice.gov/opa/pr/fact-sheet-white-house-and-justice-department-convening-cycle-incarceration-prison-debt-and [https://perma.cc/WQE2-49RF].

[187] *See* OJP DIAGNOSTIC CTR., RESOURCE GUIDE: REFORMING THE ASSESSMENT AND ENFORCEMENT OF FINES AND FEES 2–3, http://ojp.gov/docs/finesfeesresguide.pdf [https://perma.cc/SZ7R-EZJK].

[188] *See* BUREAU OF JUSTICE ASSISTANCE, OFFICE OF JUSTICE PROGRAMS, U.S. DEP'T OF JUSTICE, THE PRICE OF JUSTICE: RETHINKING THE CONSEQUENCES OF JUSTICE FINES AND FEES FY 2016 COMPETITIVE GRANT ANNOUNCEMENT 1 (2016), https://www.bja.gov/funding/JRIpriceofjustice.pdf [https://perma.cc/ZYU3-CFVC].

[189] Another way that my Administration sought to address these issues was through the creation of the White House Legal Aid Interagency Reentry Roundtable. Cochaired by Attorney General Lynch and Director of the Domestic Policy Council Cecilia Muñoz, and staffed by the DOJ Office for Access to Justice, this body was established to help provide legal assistance to Americans in need and to ensure that agencies across the federal government are working together to integrate legal aid into their programs, policies, and initiatives. *See* Press Release, Office of the Press Sec'y, Presidential Memorandum — Establishment of the White House Legal Aid Interagency Roundtable (Sept. 24, 2015), https://www.whitehouse.gov/the-press-office/2015/09/24/presidential-memorandum-establishment-white-house-legal-aid-interagency [https://perma.cc/BZ3P-ZHT8].

C. Spurring State Sentencing Reform and Justice Reinvestment

At the state level, we are increasingly seeing tough-on-crime rhetoric recede, replaced by a call for better public safety at a lower cost. The Justice Reinvestment Initiative (JRI) is one example of how the federal government can accelerate these types of reforms in the states.[190] A public-private partnership between the Department of Justice and the Pew Charitable Trusts, JRI was formally launched in 2010 to help states devise better policies and practices to manage those who break their laws.[191] Through JRI, over two dozen states have enacted a wide range of reforms to make their criminal justice systems operate more efficiently and effectively.[192] Many have found ways to expedite release from prison by expanding parole eligibility,[193] streamlining administrative processes,[194] and implementing or expanding earned time credits that allow individuals in prison to earn time off of their sentences for good behavior. Collectively, it is estimated that these states saved on the order of $1 billion — with more savings to be realized in the years to come.[195] These changes, moreover, have also enhanced public safety. For example, in Louisiana, individuals spent less time in prison following supervision revocations with no harm to public safety,[196] and in Kentucky, mandatory supervision reduced the risk of recidivism for individuals released to the community within the first year.[197]

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190 *FAQs*, OFF. JUST. PROGRAMS: JUST. REINVESTMENT INITIATIVE, https://www.bja.gov/programs/justicereinvestment/faqs.html [https://perma.cc/P4JZ-J696].

191 *Id.*

192 *JRI Sites*, OFF. JUST. PROGRAMS: JUST. REINVESTMENT INITIATIVE, https://www.bja.gov/programs/justicereinvestment/jri_sites.html [https://perma.cc/Q2P2-A7DH].

193 *See, e.g.*, Betsy Z. Russell, *With Justice Reinvestment Initiative, More Idaho Prisoners Getting Out on Parole . . .* , SPOKESMAN-REV.: EYE ON BOISE (Mar. 9, 2016, 8:16 AM), http://www.spokesman.com/blogs/boise/2016/mar/09/justice-reinvestment-initiative-more-idaho-prisoners-getting-out-parole [https://perma.cc/7VF8-TR6F].

194 *See, e.g.*, *Prison, Sentencing Reforms Under Way*, AMERICANPRESS.COM (June 25, 2016, 11:32 AM), http://www.americanpress.com/20160625-ed-Prison-reforms [https://perma.cc/LXB2-C6YY].

195 *See* JRI Executive Summary and Conclusion (on file with the White House) ("As of 2016, states have documented more than $964 million in savings and averted costs and reinvested more than $460 million in JRI reform efforts. As most states are still in the process of implementing reforms, the full impact of JRI has yet to be realized.").

196 *See* PEW CHARITABLE TRS., REDUCING INCARCERATION FOR TECHNICAL VIOLATIONS IN LOUISIANA 3 (2014), http://www.pewtrusts.org/~/media/assets/2014/11/psppreducingincarcerationfortechnicalviolationsinlouisiana.pdf [https://perma.cc/PF88-5FB7].

197 *See* PEW CHARITABLE TRS., MANDATORY REENTRY SUPERVISION: EVALUATING THE KENTUCKY EXPERIENCE 3 (2014), http://www.pewtrusts.org/~/media/assets/2014/06/pspp_kentucky_brief.pdf [https://perma.cc/GT37-S75D].

D. Keeping the Focus on Reform

One way that I tried to change the narrative on criminal justice reform was to openly and honestly address it as often as I could. In July 2015, in a speech in Philadelphia in front of the NAACP, I made the comprehensive case for reform.[198] To highlight the human impact of the system, I became the first sitting President to visit a federal prison while in office when I traveled to the El Reno correctional institution in Oklahoma.[199] There, I sat down with six inmates who made mistakes that aren't all that different from mistakes I made.[200] They suffered from not having the kinds of support structures, second chances, and — perhaps most importantly — resources that would have allowed them to move beyond those mistakes.[201] My team brought formerly incarcerated individuals to the White House to celebrate former prisoners' contributions to the arts and how arts education helps reentry,[202] to recognize employers who have helped the formerly incarcerated in the job sector,[203] and to discuss how incarceration impacts girls and women,[204] members of the LGBT community,[205] and Americans with disabilities.[206] My team convened clemency recipients,[207]

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198 Obama, *supra* note 11.

199 *See* President Barack Obama, Remarks by the President at El Reno Federal Correctional Institution (July 16, 2015, 11:25 AM), https://www.whitehouse.gov/the-press-office/2015/07/16/remarks-president-after-visit-el-reno-federal-correctional-institution [https://perma.cc/4ND4-3CPE].

200 *See* Shane Smith, *Fixing the System: An Interview with President Obama on Prison Reform*, VICE (Oct. 5, 2015), http://www.vice.com/read/fixing-the-system-0000760-v22n10 [https://perma.cc/7M8Z-5XCU].

201 *Cf.* MICHELLE ALEXANDER, THE NEW JIM CROW 215 (rev. ed. 2012) ("All people make mistakes. All of us are sinners. All of us are criminals. All of us violate the law at some point in our lives. In fact, if the worst thing you have ever done is speed ten miles over the speed limit on the freeway, you have put yourself and others at more risk of harm than someone smoking marijuana in the privacy of his or her living room. Yet there are people in the United States serving life sentences for first-time drug offenses, something virtually unheard of anywhere else in the world.").

202 Press Release, Ted Lieu, U.S. Representative, Congressman Lieu & Tim Robbins to Take Part in White House Event on Arts, Innovation & Prison Reform (Dec. 17, 2015), https://lieu.house.gov/media-center/press-releases/congressman-lieu-tim-robbins-take-part-white-house-event-arts-innovation [https://perma.cc/6KLB-3T8T].

203 *See Champions of Change: Reentry and Employment*, WHITE HOUSE, https://www.whitehouse.gov/champions/reentry-and-employment [https://perma.cc/CR8J-KBNK].

204 Press Release, Office of the Press Sec'y, FACT SHEET: Advancing Equity for Women and Girls of Color (Nov. 13, 2015), https://www.whitehouse.gov/the-press-office/2015/11/13/fact-sheet-advancing-equity-women-and-girls-color [https://perma.cc/2CG2-97RH].

205 *See White House Hosts Historic Meeting on LGBTQ People and People Living with HIV in the U.S. Criminal Justice System*, LAMBDA LEGAL (Sept. 20, 2016), http://www.lambdalegal.org/blog/20160920_white-house-historic-meeting-lgbtq-hiv-criminal-justice-system [https://perma.cc/8X86-R659].

206 *See White House Forum on Criminal Justice Reform and Disability*, WHITE HOUSE (July 18, 2016), https://www.whitehouse.gov/photos-and-video/video/2016/07/18/white-house-forum-criminal-justice-reform-and-disability [https://perma.cc/Z87P-VHZC].

and I took a group of them for lunch at a local restaurant to listen to their stories and the challenges they face.[208] I wrote an op-ed that highlighted the heartbreaking consequences of placing young people in solitary confinement.[209]

Of course, there are limits to this approach. Presidents are not private citizens. We need to be careful about speaking about legal matters before all the facts are in — even if it appears that everyone else in the United States is commenting on them. Public attention to criminal justice (particularly in the arena of policing) is often driven by pending investigations and cases in which the facts are still being gathered. Oftentimes, it is a viral YouTube video that leads the evening news, incites protests, and drives calls for reform. Like millions of others, I would watch these videos, but the office makes it difficult to comment the way a journalist or activist would without being accused of prejudging the facts or influencing the legal process.

E. Promoting Data-Driven Solutions

The White House's Data-Driven Justice Initiative (DDJ) and Police Data Initiative (PDI) are two examples of how the federal government can advance solutions at the state and local level by supporting innovation and bringing together committed reformers.

The focus of DDJ is on reducing unnecessary jail stays.[210] Over eleven million people move through the country's 3100 local jails each year, many of whom are charged with low-level, nonviolent misdemeanors.[211] Keeping this population in jail costs local governments an estimated $22 billion a year in incarceration costs alone, in part because of the high number of jail inmates who are in need of treatment for mental illness, a substance use disorder, or chronic health problems.[212]

Much of this cost is driven by a comparatively small population. Studies have shown that "a relatively small number of highly vulnerable individuals cycle repeatedly not just through local jails, but also

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[207] *See* The White House, *White House Briefing on Life After Clemency*, YOUTUBE (Mar. 31, 2016), https://www.youtube.com/watch?v=hHrjOmbioYw [https://perma.cc/45W6-8TZA].

[208] *President Obama Meets with Former Inmates in the Langston Room*, BUSBOYS & POETS (Mar. 31, 2016), http://www.busboysandpoets.com/blog/president-obama-meets-with-former-inmates-in-the-langston-room [https://perma.cc/DVY4-QSSN].

[209] Obama, *supra* note 92.

[210] Press Release, Office of the Press Sec'y, FACT SHEET: Launching the Data-Driven Justice Initiative: Disrupting the Cycle of Incarceration (June 30, 2016), https://www.whitehouse.gov/the-press-office/2016/06/30/fact-sheet-launching-data-driven-justice-initiative-disrupting-cycle [https://perma.cc/55E3-RYHR].

[211] *Id.*

[212] *Id.*

hospital emergency rooms, shelters, and other public systems."[213] The fragmented care that these so-called "super utilizers" receive while caught in this cycle leads to poor outcomes and comes at a great cost to taxpayers.[214] Nationwide, slightly more than one in twenty individuals have some form of mental illness. In 2005, more than half of the incarcerated population did.[215] Data from 2012 finds that 15% of prisoners and 26% of jail inmates experience serious psychological distress.[216]

Across the country, communities are recognizing that there are better and more cost-effective solutions. A good example of reform can be found in Miami-Dade County, Florida, where the county combined data across their health care and criminal justice systems and discovered that just ninety-seven people with serious mental illness accounted for $13.7 million in services between 2010 and 2014.[217] These few dozen people spent more than 39,000 days not in treatment, but in jails, emergency rooms, state hospitals, or psychiatric facilities in their county.[218] In search of a better way, and recognizing that this population frequently came into contact with law enforcement, the county provided key mental health de-escalation training to their police officers and 911 dispatchers. Over the last five years, police in Miami-Dade County have responded to almost 50,000 calls for service for people suffering from mental health issues, but have made only 109 arrests and have directed more than 10,000 people to services or safely stabilized situations without arrest.[219] The jail population fell from over 7000 to just over 4700, and the county was able to close an entire jail, saving nearly $12 million a year.[220]

DDJ allowed the White House to bring together a bipartisan coalition of city, county, and state governments, with the support of a broad range of nonprofit organizations, private sector entities, philanthropies, and universities in an effort to expand these kinds of better alternatives.[221] The response to DDJ has been overwhelming. At this time, a total of 139 states, counties, and cities, covering almost 100 million Americans, have agreed to participate and to begin putting these strat-

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213 *Id.*

214 *See, e.g.*, Chris Halsne, *Super Utilizers Place Huge Burden on Health Care System*, FOX31 DENV. (Feb. 26, 2014, 10:00 PM), http://kdvr.com/2014/02/26/super-utilizers-place-huge-burden-on-health-care-system [https://perma.cc/K98N-A6FN].

215 ECONOMIC PERSPECTIVES ON INCARCERATION, *supra* note 17, at 33.

216 *Id.*

217 Press Release, Office of the Press Sec'y, *supra* note 210.

218 *Id.*

219 *Id.*

220 *Id.*

221 *Id.*

egies into practice.[222] The initiative is a good example of what can be accomplished simply by bringing together committed representatives of different communities so they can learn from one another — and see that they are not alone in trying to address these issues. I expect its work will be carried forward by those in government and by the private, academic, and philanthropic sectors.[223]

Separately, the White House created PDI as a way to help improve police-community relations by giving communities insight into the policing activities of their law enforcement agencies.[224] My Administration has made transparency a priority, and we have seen enormous gains in the area of policing. Through PDI, more than 130 law enforcement agencies with jurisdiction over forty million Americans have volunteered to participate in this effort.[225] These agencies have already released more than 175 machine-readable data sets disaggregated by race and gender on subjects including use of force, officer-involved shootings, citations, and complaints.[226] For example, Louisville, Kentucky, is releasing every citation issued in real time,[227] Orlando, Florida, is releasing full data on every police-involved shooting,[228] and a federal judge in New Orleans, Louisiana, has described the police department's release of data as "a miraculous transformation."[229] Participating agencies describe this transparency as helping to improve relations with the community, making the data more accurate, and reducing costs related to public-records requests. As expected, outside organizations are using this newly released data to bet-

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[222] *Growing Number of Communities Are Using Data to Improve Policing and Criminal Justice*, U.S DEP'T JUST.: JUST. BLOGS (Oct. 13, 2016), https://www.justice.gov/opa/blog/growing-number-communities-are-using-data-improve-policing-and-criminal-justice [https://perma.cc/9F8C-JSP8].

[223] The White House joined with Stanford University and the Chan Zuckerberg Initiative in December 2016 to discuss ways to move forward. *See* Alex Shashkevich, *New Stanford Lab Will Create Technologies that Help Alleviate Poverty in America*, STANFORD: NEWS (Dec. 6, 2016), http://news.stanford.edu/2016/12/06/new-stanford-lab-will-create-technologies-help-alleviate-poverty-america [https://perma.cc/LN22-DU5U].

[224] Press Release, Office of the Press Sec'y, FACT SHEET: White House Police Data Initiative Highlights New Commitments (Apr. 21, 2016), https://www.whitehouse.gov/the-press-office/2016/04/22/fact-sheet-white-house-police-data-initiative-highlights-new-commitments [https://perma.cc/HS9S-3KAL].

[225] *Growing Number of Communities Are Using Data to Improve Policing and Criminal Justice*, *supra* note 222.

[226] *Id.*

[227] *See Crime Data 2016*, LOUISVILLE OPEN DATA, https://data.louisvilleky.gov/dataset/crime-data/resource/3d20faa7-c004-4737-abe1-ee754eec439b [https://perma.cc/KKP8-N8BK].

[228] *See Police Data Initiative*, CITY ORLANDO, http://www.cityoforlando.net/police/police-data-initiative [https://perma.cc/5TQP-NPG7].

[229] *See* Matt Sledge, *Federal Judge Praises NOPD's Push for More Open Data but Says More Progress Needed*, NEW ORLEANS ADVOC., (Nov. 7, 2016), http://www.theadvocate.com/new_orleans/news/crime_police/article_4be5b7aa-ad22-11e6-920d-6b4f47e93f14.html [https://perma.cc/QS7J-C62U].

ter understand police activities and the impact those activities are having on different communities.[230] The Office of Community Oriented Policing Services at the Department of Justice will continue this work along with private businesses and nongovernmental organizations.

F. Highlighting Ways the Juvenile Justice System Falls Short

As Americans, we have a shared responsibility to ensure that all children are given a fair shot at life, including a quality education and equal opportunities to pursue their dreams.[231] Yet each year, an alarming number of students are diverted from pursuing their dreams as a result of unnecessarily harsh school discipline policies and practices, such as suspensions, expulsions, and even arrests for minor infractions. "Zero-tolerance" policies — however well-intentioned — often make students feel unwelcome in their own schools. They can disrupt the learning process and have significant and lasting negative effects on the long-term well-being of our youth — increasing their likelihood of future contact with juvenile and criminal justice systems.[232]

In 2011, my Administration launched the Supportive School Discipline Initiative, a collaborative project between the Departments of Justice and Education to revamp school discipline policies and support underfunded schools so that our education system serves as a pathway to opportunity, rather than a pipeline to prison.[233] We have worked to assist states, schools, and law enforcement partners in assessing the proper role of school resource officers and campus law enforcement professionals.[234] And we have celebrated where there are strong relationships between law enforcement and youth.[235]

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[230] *See, e.g.*, PHILLIP ATIBA GOFF ET AL., THE SCIENCE OF POLICING EQUITY 1–2 (2016), http://policingequity.org/wp-content/uploads/2016/10/Austin_PDI_Report_2016_Release.pdf [https://perma.cc/D5FM-K5EG].

[231] *See* Proclamation No. 9512, 81 Fed. Reg. 69,379 (Sept. 30, 2016).

[232] *See* Eric Holder, Att'y Gen., U.S. Dep't of Justice, Remarks at the Department of Justice and Department of Education School Discipline Guidance Rollout at Frederick Douglass High School (Jan. 8, 2014), https://www.justice.gov/opa/speech/attorney-general-eric-holder-delivers-remarks-department-justice-and-department-education [https://perma.cc/39FJ-8G3Q].

[233] U.S. DEP'T OF EDUC., SUPPORTIVE SCHOOL DISCIPLINE INITIATIVE, http://www2.ed.gov/policy/gen/guid/school-discipline/appendix-3-overview.pdf [https://perma.cc/HGX3-7BRU].

[234] Press Release, U.S. Dep't of Educ., Obama Administration Releases Resources for Schools, Colleges to Ensure Appropriate Use of School Resource Officers and Campus Police (Sept. 8, 2016), http://www.ed.gov/news/press-releases/obama-administration-releases-resources-schools-colleges-ensure-appropriate-use-school-resource-officers-and-campus-police [https://perma.cc/ERM7-B7RM].

[235] *See* The White House, *Champions of Change: Building Bridges Between Youth and Law Enforcement*, YOUTUBE (Sept. 21, 2015), https://www.youtube.com/watch?v=KJjASvUkoCU [https://perma.cc/2LKM-DJYC].

Additionally, my Administration released a policy statement against the use of suspension and expulsion in preschool settings[236] — which disproportionately affects children of color — and is working to build better diversion policies to screen and treat youth for substance abuse, trauma, and unmet mental, emotional, and behavioral needs.[237] A few years ago, the Department of Justice also launched the Smart on Juvenile Justice Initiative to advance system-wide reforms that improve youth outcomes, providing services (such as job training and substance use disorder treatment and counseling) for youth in juvenile facilities while expanding the use of effective community-based alternatives to youth detention.[238] While the number of juvenile arrests has fallen sharply over the past decade, roughly one million juvenile arrests were made in 2014.[239] An overwhelming majority of these arrests were for nonviolent crimes. Children of color, particularly black and Hispanic males and Native American youth, continue to be overrepresented across all levels of the juvenile justice system.[240]

Unfortunately, far too many juveniles become involved with the adult criminal justice system each year — including in five states where seventeen-year-olds are prosecuted as adults regardless of the crime, and two where sixteen-year-olds are as well.[241] Children in the adult system have less access to rehabilitative services and often face higher recidivism and suicide rates.[242] South Carolina[243] and Louisi-

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[236] Early Childhood Dev., *Reducing Suspension and Expulsion Practices in Early Childhood Settings*, U.S. DEP'T HEALTH & HUM. SERVICES, http://www.acf.hhs.gov/ecd/child-health-development/reducing-suspension-and-expulsion-practices (last updated Nov. 4, 2016) [https://perma.cc/K9FV-T6RS].

[237] *See SAMHSA's Efforts on Criminal and Juvenile Justice Issues*, SUBSTANCE ABUSE & MENTAL HEALTH SERVICES ADMIN., http://www.samhsa.gov/criminal-juvenile-justice/samhsas-efforts (last updated Mar. 7, 2016) [https://perma.cc/225J-WC9R].

[238] *See OJJDP Announces New Smart on Juvenile Justice Funding Opportunities*, OFF. JUV. JUST. & DELINQUENCY PREVENTION (June 25, 2014), https://www.ojjdp.gov/enews/14juvjust/140625b.html [https://perma.cc/6J7L-HKC9].

[239] *OJJDP Statistical Briefing Book*, OFF. JUV. JUST. & DELINQUENCY PREVENTION (Dec. 13, 2015), https://www.ojjdp.gov/ojstatbb/crime/qa05101.asp?qa [https://perma.cc/T5R3-2ULX].

[240] *See generally* JOSHUA ROVNER, THE SENTENCING PROJECT, DISPROPORTIONATE MINORITY CONTACT IN THE JUVENILE JUSTICE SYSTEM (2014), http://www.sentencingproject.org/wp-content/uploads/2015/11/Disproportionate-Minority-Contact-in-the-Juvenile-Justice-System.pdf [https://perma.cc/S8LP-28KL].

[241] *See* Erik Eckholm, *States Move Toward Treating 17-Year-Old Offenders as Juveniles, Not Adults*, N.Y. TIMES (May 13, 2016), http://www.nytimes.com/2016/05/14/us/states-move-to-treat-17-year-old-offenders-as-juveniles.html [https://perma.cc/7RWY-9RY9]; *see also* Rich Williams, *South Carolina Raises the Age of Juvenile Court Jurisdiction, Louisiana to Follow*, NAT'L CONF. ST. LEGISLATURES (June 7, 2016), http://www.ncsl.org/blog/2016/06/07/south-carolina-raises-the-age-of-juvenile-court-jurisdiction-louisiana-to-follow.aspx [https://perma.cc/MJZ2-DPMG].

[242] DAVID GOTTESMAN & SUSAN WILE SCHWARZ, NAT'L CTR. FOR CHILDREN IN POVERTY, JUVENILE JUSTICE IN THE U.S.: FACTS FOR POLICYMAKERS 3 (2011), http://www.nccp.org/publications/pub_1038.html [https://perma.cc/AQ44-UUKD] ("[J]uveniles will be even

ana[244] have very recently raised the age at which juveniles may be tried in adult court so that sixteen- and seventeen-year-olds are not unnecessarily tried in adult courts, and many states are reforming sentencing laws and expanding access to age-appropriate transition services upon reentry. To build on these efforts, Congress should reauthorize the Juvenile Justice and Delinquency Prevention Act of 1974[245] to increase protections for youth and limit the number of minors held in adult jails and prisons.[246] Reauthorizing this legislation would "promote evidence-based practices, quality education, and trauma-informed care for incarcerated youth, while reducing punishments for things such as breaking curfew and truancy."[247]

G. Creating Opportunities Through the My Brother's Keeper Initiative and the Council on Women and Girls

In 2014, I launched the My Brother's Keeper (MBK) initiative to help all young people reach their full potential, no matter what their background or the circumstances into which they were born.[248] For almost three years, the MBK Task Force has been focused on promoting policies that will help connect young people to mentoring, support networks, and the skills they need to find a good job or go to college. Through this work, we've been able to make some significant progress at the federal level to promote community-oriented policing practices, improve trust between law enforcement and the communities they serve, and reform the juvenile and criminal justice systems to limit unnecessary interactions with law enforcement while providing alternatives to incarceration and enforcing the rights of incarcerated youth to a quality education. For instance, in 2015, the Departments of Justice and Education established the "Second Chance Pell" pilot program, enabling incarcerated Americans to receive Pell Grants to finance postsecondary education and training.[249] And we've also helped eliminate barriers to reentry through fair chance hiring practices.[250]

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less likely to receive the necessary therapeutic and rehabilitative services than they would in juvenile residential facilities.").

243 Williams, *supra* note 241.

244 *Raise the Age LA Becomes Law!*, LA. CTR. FOR CHILDREN'S RTS. (June 14, 2016), http://www.laccr.org/news/raise-the-age-la-becomes-law [https://perma.cc/9CDY-QJE4].

245 Pub. L. No. 93-415, 88 Stat. 1109 (codified as amended in scattered sections of 5, 18, and 42 U.S.C.).

246 *See History of the JJDPA*, COALITION FOR JUV. JUST., http://www.juvjustice.org/federal-policy/juvenile-justice-and-delinquency-prevention-act [https://perma.cc/96QM-25PR].

247 Proclamation No. 9512, 81 Fed. Reg. 69,379, 69,379 (Sept. 30, 2016).

248 Creating and Expanding Ladders of Opportunity for Boys and Young Men of Color, 79 Fed. Reg. 12,923 (Feb. 27, 2014).

249 Press Release, U.S. Dep't of Educ., 12,000 Incarcerated Students to Enroll in Postsecondary Educational and Training Programs Through Education Department's New Second Chance Pell Pilot Program (June 24, 2016), http://www.ed.gov/news/press-releases/12000-incarcerated-students

How communities across the country have responded to the MBK initiative is just as promising as the work itself. In September 2014, we launched the MBK Community Challenge and called on communities to develop their own comprehensive plans to expand opportunities for young people — plans that should ensure children are able to succeed in school, graduate, get a job, and stay safe from violent crime.[251] Nearly 250 cities, towns, counties, and tribal nations, representing all fifty states, have accepted the challenge, met with local stakeholders to design these kinds of plans, and started taking steps to implement them.[252] For example, in Detroit, Michigan, a new initiative matches police officers, who serve as mentors, with baseball and softball teams.[253] In New York, leaders inspired by MBK are pursuing an evidence-based literary intervention program for elementary school students and are helping to connect thousands of students transitioning into middle school or high school with mentors.[254] In Indianapolis, Indiana, the city has encouraged input from a variety of officials and community leaders to develop action plans to improve youth outcomes.[255]

In addition, the White House Council on Women and Girls (CWG) has sought to highlight the unique challenges facing women and girls in the criminal justice system.[256] In 2014, the CWG published *Women and Girls of Color: Addressing Challenges and Expanding Opportunity* to ensure that policies and programs across the federal government advance outcomes for all women and girls, including those of color

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-enroll-postsecondary-educational-and-training-programs-through-education-departments-new-second-chance-pell-pilot-program [https://perma.cc/9KTH-JJMD].

250 *See* Press Release, *supra* note 122.

251 Press Release, Office of the Press Sec'y, FACT SHEET: The White House Launches the "My Brother's Keeper Community Challenge" (Sept. 30, 2014), https://www.whitehouse.gov/the-press-office/2014/09/30/fact-sheet-white-house-launches-my-brother-s-keeper-community-challenge [https://perma.cc/HPQ7-C6YP]; *see also My Brother's Keeper*, WHITE HOUSE, https://www.whitehouse.gov/my-brothers-keeper [https://perma.cc/U8GU-5F2R].

252 THE WHITE HOUSE, MY BROTHER'S KEEPER 2016 PROGRESS REPORT: TWO YEARS OF EXPANDING OPPORTUNITY AND CREATING PATHWAYS TO SUCCESS 4 (2016), https://www.whitehouse.gov/sites/whitehouse.gov/files/images/MBK-2016-Progress-Report.pdf [https://perma.cc/G47S-6P48].

253 MY BROTHER'S KEEPER DETROIT, RECOMMENDATIONS FOR ACTION 5 (2015), http://www.detroitmi.gov/Portals/o/docs/MyBrotherKeeper/MBK-Report.pdf [https://perma.cc/MV59-4W9L].

254 THE WHITE HOUSE, *supra* note 252, at 10.

255 *See* MY BROTHER'S KEEPER TASK FORCE, ONE-YEAR PROGRESS REPORT TO THE PRESIDENT 16 (2015), http://www.mbkchallenge.org/pdf/mbk-task-force-one-year-progress-report-to-the-president.pdf [https://perma.cc/NY34-K2HD].

256 In September 2015, I spoke of the need to do more about the "sinister sexual abuse-to-prison pipeline." President Barack Obama, Remarks by the President at the Congressional Black Caucus 45th Annual Phoenix Awards Dinner (Sept. 20, 2015), https://www.whitehouse.gov/the-press-office/2015/09/21/remarks-president-congressional-black-caucus-45th-annual-phoenix-awards [https://perma.cc/Z3H6-9XY3].

and from marginalized communities.[257] Girls and young women represent a growing share of juvenile arrests and delinquencies. As a subsequent report highlighted, the most common offenses for which girls are arrested include running away and truancy, behaviors that are also "the most common symptoms or outcomes of trauma and abuse."[258] In addition, studies suggest that African American girls are trafficked at younger ages and witness and experience multiple forms of violence at higher rates.[259] My Administration has taken a series of actions to make improvements for all youth, including girls and young women of color, beginning with a focus on evidence-based programs that emphasize the importance of second chances.[260]

IV. WORK UNFINISHED

Even as I am proud of what we accomplished, I am aware of how much work is left unfinished. Our criminal justice system took a long time to build and will take a long time to change. Here are commonsense steps that I am hopeful could be accomplished in the next few years, especially because they reflect compelling policy arguments and engender broad consensus.[261]

A. Pass Sentencing Reform Legislation

We still need to pass meaningful sentencing reform legislation. No number of commutations will ever achieve lasting structural reform of our sentencing laws, and there remains too much bipartisan goodwill and cooperation on this issue to let progress stall. The Sentencing Re-

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[257] *See* THE WHITE HOUSE COUNCIL ON WOMEN & GIRLS, WOMEN AND GIRLS OF COLOR: ADDRESSING CHALLENGES AND EXPANDING OPPORTUNITY (2014), https://www.whitehouse.gov/sites/default/files/docs/cwg_women_and_girls_of_color_report_112014.pdf [https://perma.cc/C4X8-65JM].

[258] THE WHITE HOUSE COUNCIL ON WOMEN & GIRLS, ADVANCING EQUITY FOR WOMEN AND GIRLS OF COLOR 5 (2015), https://www.whitehouse.gov/sites/whitehouse.gov/files/documents/ADVANCING_EQUITY_FOR_WOMEN_AND_GIRLS_OF_COLOR_REPORT.pdf [https://perma.cc/L6R4-JB57].

[259] *See, e.g.*, RIGHTS4GIRLS, DOMESTIC CHILD SEX TRAFFICKING AND AFRICAN AMERICAN GIRLS, http://rights4girls.org/wp-content/uploads/r4g/2015/02/Af-Am-Girls-Trafficking-July-2016.pdf [https://perma.cc/FH4V-ZSY2].

[260] *See* THE WHITE HOUSE COUNCIL ON WOMEN & GIRLS, *supra* note 258 (stressing the importance of "[e]nhancing programmatic responses by integrating evidence-based trauma-informed and trauma-sensitive perspectives into youth serving systems and organizations," *id.* at 6, and expanding data collection to gain "a better understanding of the population of those affected through research and the release of data disaggregated by race, gender, and other variables," *id.* at 6–7).

[261] The White House and the Presidency do not exist in a political vacuum, and the politics around criminal justice reform can often be challenging. Even as long-term trends in violent crime are on the decline, there will inevitably be some areas that experience an uptick in violent crime, giving rise to understandable and legitimate fears in the community and political risks to the momentum behind reform.

form and Corrections Act, discussed above, would be a good start. The bill would represent a historic step forward and demonstrate continued bipartisan commitment on this issue, affecting thousands of current inmates and making the system fairer well into the future. In addition, it is vitally important that we accelerate the trend in favor of sentencing reform at the state and local levels through the kinds of thoughtful, evidence-based reforms promoted by JRI. We have seen these reforms work in so many states across the country, and each state that pushes forward with positive results makes it easier for others to follow.

B. Take Commonsense Steps to Reduce Gun Violence

We also need to do everything we can to keep our children and communities safe from gun violence. Addressing the country after mass shootings has been one of the most frustrating and disheartening responsibilities of being President — and it's something I've had to do far too often. The names of so many places that should be remembered for their great contributions and strong communities — places like Tucson, Aurora, Newtown, Charleston, and Orlando — still conjure up for me the deep sadness of so much unnecessary violence and loss.

There should be no mistake that gun violence is an epidemic playing out across the country every day. Over the past decade alone, more than 100,000 people have been killed as a result of gun violence — and millions more have been victims of assaults, robberies, and other crimes involving a gun.[262] Over the same period, nearly 200,000 of our neighbors, friends, and family have committed suicide with a gun.[263] Hundreds of law enforcement officers have been shot to death protecting their communities.[264] And too many

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[262] *See, e.g.*, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, SPECIAL REPORT: FIREARM VIOLENCE 1993–2011, at 1 fig.1, 2 fig.2 (2013), https://www.bjs.gov/content/pub/pdf/fv9311.pdf [https://perma.cc/CP2Y-45RR] (showing firearm homicides and nonfatal victimizations). More recent data is available from the Centers for Disease Control and Prevention's WISQARS database. *Injury Prevention & Control: Data & Statistics (WISQARS™)*, http://www.cdc.gov/injury/wisqars/index.html (last updated May 4, 2016) [https://perma.cc/DG57-9ER6]. According to the most recent data, there were 117,368 firearm homicides in the United States from 2005 to 2014. *Id.* (numbers obtained by searching for homicide-related firearm fatal injuries from 2005 to 2014 in the Fatal Injury Reports database).

[263] According to the most recent data available through WISQARS, there were 190,752 suicides by firearm between 2005 and 2014. *Id.* (numbers obtained by searching for firearm suicides from 2005 to 2014 in the Fatal Injury Reports database).

[264] According to the most recent data available through WISQARS, there were 6026 unintentional deaths by firearm between 2005 and 2014 — 968 of which were of children under the age of 18. *Id.* (numbers obtained by searching for unintentional firearm deaths from ages 0 to 17 in the Fatal Injury Reports database). Over the same period, more than 8500 children under the age of

children have been killed or injured by firearms, often by accident.[265] We have a responsibility to come together as a country to address this epidemic.[266]

I've tried to remind the country of how much common ground we can find on these issues. After a tragic shooting, we always come together to wrap those who are grieving with our prayers and love. But as I've said many times: "[O]ur thoughts and prayers are not enough."[267] They alone won't "capture the heartache and grief and anger we should feel," and they do "nothing to prevent this carnage from being inflicted someplace else in America."[268] We have a responsibility to act. And like the vast majority of Americans — including the vast majority of gun owners[269] — I believe we can take commonsense steps to reduce gun violence that are consistent with the Second Amendment.

As an Administration, we've made some meaningful progress on keeping guns out of the wrong hands through background checks — whether it's making clear that anyone in the business of selling firearms must get a license and conduct background checks, or dedicating more resources to ensuring those background checks are conducted on time.[270] We've also jumpstarted the development of smart gun tech-

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18 were killed by a gun in a homicide. *Id.* (numbers obtained by searching for firearm homicides from ages 0 to 17 in the Fatal Injury Reports database).

265 *See, e.g.*, NAT'L LAW ENF'T OFFICERS MEM'L FUND, 2016 MID-YEAR LAW ENFORCEMENT OFFICER FATALITIES REPORT (2016), http://www.nleomf.org/assets/pdfs/reports/2016-Mid-Year-Officer-Fatalities-Report.pdf [https://perma.cc/UEV6-Z93M]; *see also Causes of Law Enforcement Deaths*, NAT'L L. ENFORCEMENT OFFICERS MEMORIAL FUND, http://www.nleomf.org/facts/officer-fatalities-data/causes.html (last updated July 18, 2016) [https://perma.cc/UJ58-FZSA].

266 Coming together on this issue could also help stem the cycle of violence that exists in too many communities. To take just one indicator, it's estimated that 79% of juveniles who receive the harshest prison sentences witnessed violence in their homes and more than half "witnessed weekly violence in their neighborhoods." ASHLEY NELLIS, THE SENTENCING PROJECT, THE LIVES OF JUVENILE LIFERS: FINDINGS FROM A NATIONAL SURVEY 2 (2012), http://sentencingproject.org/wp-content/uploads/2016/01/The-Lives-of-Juvenile-Lifers.pdf [https://perma.cc/MBY5-EUJU].

267 President Barack Obama, Statement by the President on the Shootings at Umpqua Community College, Roseburg, Oregon (Oct. 1, 2015), https://www.whitehouse.gov/the-press-office/2015/10/01/statement-president-shootings-umpqua-community-college-roseburg-oregon [https://perma.cc/9DUG-EXJ8].

268 *Id.*

269 *See*, *e.g.*, Press Release, Quinnipiac Univ. Poll, Overwhelming Support for No-Fly, No-Buy Gun Law, Quinnipiac University National Poll Finds; Support for Background Checks Tops 90 Percent Again (June 30, 2016), https://poll.qu.edu/national/release-detail?ReleaseID=2364 [https://perma.cc/U8BM-84Y5] (finding that among voters in households with a gun, 92% support "requiring background checks for all gun buyers" and 83% believe "those on the government's terrorist watch list should not be allowed [to] purchase guns").

270 Press Release, Office of the Press Sec'y, FACT SHEET: New Executive Actions to Reduce Gun Violence and Make Our Communities Safer (Jan. 4, 2016), https://www.whitehouse.gov/the

nology.[271] As long as we've got technology to prevent a criminal from stealing and using your smartphone, then we should be able to prevent the wrong person — including kids — from pulling the trigger on a gun.

But there's a great deal of work left to be done. Congress should pass the kinds of commonsense reforms supported by most of the American people — from investing in access to mental health care, to expanding background checks, to making it possible to keep guns out of the hands of suspected terrorists. The actions we take won't prevent every act of violence — but if even one life is spared, they will have been well worth it.

C. Address Opioid Misuse and Addiction as a Public Health Issue

Opioid use disorder, or addiction to prescription opioid pain relievers or heroin, is a disease that touches too many of our communities — big and small, urban and rural — and devastates families, all while straining the capacity of law enforcement and the health care system. Each year, more Americans die from drug overdoses than from traffic accidents,[272] and more than three out of five of these deaths involve an opioid.[273] Since 1999, sales of prescription opioid pain medications have quadrupled.[274] In 2012, 259 million prescriptions were written for these drugs, which is more than enough to give every American adult their own bottle of pills.[275] As their use has increased, so has their misuse. At the same time, we've seen a dramatic rise in the use

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-press-office/2016/01/04/fact-sheet-new-executive-actions-reduce-gun-violence-and-make-our [https://perma.cc/RB69-EKBV].

[271] *Id.*; DEP'TS OF JUSTICE, HOMELAND SEC., AND DEF., REPORT TO THE PRESIDENT OUTLINING A STRATEGY TO EXPEDITE DEPLOYMENT OF GUN SAFETY TECHNOLOGY (Apr. 2016), https://www.whitehouse.gov/sites/default/files/docs/final_report-smart_gun_report.pdf [https://perma.cc/UBT8-HDH8]; NAT'L. INST. OF JUSTICE, BASELINE SPECIFICATIONS FOR LAW ENFORCEMENT SERVICE PISTOLS WITH SECURITY TECHNOLOGY (Nov. 2016), https://www.ncjrs.gov/pdffiles1/nij/250377.pdf [https://perma.cc/8CGX-9SDG].

[272] DRUG ENF'T ADMIN., U.S. DEP'T OF JUSTICE, 2015 NATIONAL DRUG THREAT ASSESSMENT SUMMARY (2015), https://www.dea.gov/docs/2015%20NDTA%20Report.pdf [https://perma.cc/3RSG-UEDS] ("Drug overdose deaths have become the leading cause of injury death in the United States, surpassing the number of deaths by motor vehicles and by firearms every year since 2008." *Id.* at iii.).

[273] Rose A. Rudd et al., *Increases in Drug and Opioid Overdose Deaths — U.S. 2004–2014*, CENTERS FOR DISEASE CONTROL & PREVENTION (Jan. 1, 2016), http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6450a3.htm?s_cid=mm6450a3_w [https://perma.cc/3XHE-27M2].

[274] Leonard J. Paulozzi et al., *Overdoses of Prescription Opioid Pain Relievers — United States 1999–2008*, CENTERS FOR DISEASE CONTROL & PREVENTION: VITAL SIGNS (Nov. 4, 2011), http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6043a4.htm [https://perma.cc/46JL-6APZ] ("Sales of [opioid pain relievers] in 2010 were four times those in 1999.").

[275] *Opioid Painkiller Prescribing*, CENTERS FOR DISEASE CONTROL & PREVENTION, http://www.cdc.gov/vitalsigns/opioid-prescribing (last updated July 1, 2014) [https://perma.cc/9V7F-ZLM6].

of heroin, which belongs to the same class of drugs as opioid painkillers.[276] In fact, four in five new heroin users started out by misusing prescription drugs and then transitioned to heroin.[277]

My Administration has worked to combat this epidemic through targeted enforcement activities; funding new and unprecedented networks of law enforcement and public health partnerships to address the heroin threat; targeting heroin and prescription opioid traffickers and the illegal opioid supply chain; and thwarting doctor-shopping and disrupting so-called "pill mills."[278]

At the same time, my Administration has been very clear that the opioid epidemic is a public health problem that requires a public health response. That is why we are working with physicians, nurses, pharmacists, and others to improve opioid prescribing practices and reduce opportunities for misuse of opioids.[279] As part of this effort, doctors, dentists, advanced-practice registered nurses, physician assistants, physical therapists, and educators have committed to opioid prescriber training.[280] And at a White House meeting in April 2016, more than sixty medical schools, nearly two hundred nursing schools, and more than fifty pharmacy schools committed to prescriber training.[281] We also continue to support communities across America in ridding their medicine cabinets of unused or outdated prescription drugs, to reduce the opportunities for misuse. National Take Back Days provide a safe, convenient, and responsible way of disposing of unneeded prescription drugs.[282]

We're also working with law enforcement to help people get into treatment instead of into jail. We have expanded access to substance use disorder treatment through the Affordable Care Act.[283] We have invested in getting first responders the tools they need, like the opioid

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[276] Christopher M. Jones, *Heroin Use and Heroin Use Risk Behaviors Among Nonmedical Users of Prescription Opioid Pain Relievers — United States, 2002–2004 and 2008–2010*, 132 DRUG ALCOHOL DEPENDENCY 95, 95 (2013).

[277] *Id.* at 98.

[278] Press Release, Office of the Press Sec'y, FACT SHEET: President Obama Proposes $1.1 Billion in New Funding to Address the Prescription Opioid Abuse and Heroin Use Epidemic (Feb. 2, 2016), https://www.whitehouse.gov/the-press-office/2016/02/02/president-obama-proposes-11-billion-new-funding-address-prescription [https://perma.cc/79JW-D4NY].

[279] *Id.*

[280] *See id.*

[281] Press Release, Office of the Press Sec'y, FACT SHEET: Obama Administration Honors Americans Leading Efforts to Stop the Prescription Opioid and Heroin Epidemic (Apr. 29, 2016), https://www.whitehouse.gov/the-press-office/2016/04/29/fact-sheet-obama-administration-honors-americans-leading-efforts-stop [https://perma.cc/3WRF-JS74].

[282] Press Release, Office of the Press Sec'y, *supra* note 278.

[283] Office of Nat'l Drug Control Policy, Exec. Office of the President, *Substance Abuse and the Affordable Care Act*, WHITE HOUSE, https://www.whitehouse.gov/ondcp/healthcare [https://perma.cc/8VJB-U2S4].

overdose reversal drug naloxone, to help them respond to the opioid crisis in their communities.[284] We have changed the rules to allow more types of health care providers to provide evidence-based opioid treatment, called medication-assisted treatment, to more patients.[285]

It is imperative that we continue to make progress on these issues in the years ahead by investing in evidence-based treatment programs that save money and lives, all at a fraction of the cost of building new prisons. Millions of Americans are already in recovery from opioid and other substance use disorders because they got the treatment and care they needed. In passing the 21st Century Cures Act[286] in December 2016, Congress provided $1 billion in new funding that I called for in my budget to expand treatment for those with an opioid use disorder.[287] Now the crucial next step is putting those resources to work so that every American who wants treatment can get it and start on the road to recovery.

D. Strengthen Forensic Science and Identify Wrongful Convictions

Contrary to the perception on TV dramas, forensic science disciplines are subject to varying degrees of uncertainty and misinterpretation. A 2009 report from the National Academy of Sciences brought to light many of the challenges that the forensic sciences face in reliability and validity.[288] Continuing advancements in DNA analysis and other forensic science disciplines will improve the reliability of forensic evidence and assure that justice is served, both in contributing to the convictions of perpetrators of crimes and in exonerating those falsely accused or wrongfully convicted.

My Administration has supported a wide range of research and policy initiatives to strengthen the forensic sciences, spanning disciplines from DNA analysis and fingerprints, to tire and tread marks, ballistics, handwriting, trace-evidence and toxicological analyses, and digital evidence.[289] In 2013, DOJ and the Commerce Department's National Institute of Standards and Technology (NIST) established the first-ever National Commission on Forensic Science, a federal advisory committee to provide recommendations on how to strengthen the val-

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[284] Press Release, Office of the Press Sec'y, *supra* note 278.

[285] *Id.*

[286] H.R. 34, 114th Cong. (2016) (enacted).

[287] *See id.*; *see also* Press Release, Office of the Press Sec'y, *supra* note 278.

[288] COMM. ON IDENTIFYING THE NEEDS OF THE FORENSIC SCI. CMTY., NAT'L RESEARCH COUNCIL OF THE NAT'L ACADS., STRENGTHENING FORENSIC SCIENCE IN THE UNITED STATES: A PATH FORWARD (2009), https://www.nap.edu/catalog/12589/strengthening-forensic-science-in-the-united-states-a-path-forward [https://perma.cc/JTF5-RWPP].

[289] Tania Simoncelli, *National Commission Begins Works to Strengthen Forensic Science*, WHITE HOUSE: BLOG (Feb. 3, 2014, 7:48 AM), https://www.whitehouse.gov/blog/2014/02/03/national-commission-begins-work-strengthen-forensic-science [https://perma.cc/B82P-TBJK].

idity and reliability of the forensic sciences. In response to recommendations from the Commission, DOJ announced several actions it will take to improve its policies, including requiring the Department's forensic labs to obtain and maintain accreditation and requiring all Department prosecutors to use accredited labs to process forensic evidence when practicable within the next five years.[290]

In 2015, NIST established a $20 million Forensic Science Center of Excellence at Iowa State University to solidify the statistical foundation for disciplines including fingerprint, firearm, tool mark, and other pattern-based evidence analyses.[291] NIST also administers, in collaboration with DOJ, the Organization of Scientific Area Committees for Forensic Science,[292] a collaborative body of more than 500 forensic practitioners and other experts working to develop consensus-based forensic science standards and guidelines. In the last year, the President's Council of Advisors on Science and Technology has also focused on these important issues.[293]

The FBI not only supports forward-looking forensic-science research and technology development, but has also undertaken an unprecedented examination of previous casework and testimony. In 2012 the FBI, assisted by the Innocence Project and the National Association of Criminal Defense Lawyers, launched a review of testimony about microscopic hair evidence.[294] This review was the result of a series of high-profile exonerations of wrongfully convicted individuals that indicated that testimony exceeded the scientific capabilities of the technique.[295] The FBI reviewed more than 21,000 cases in which the

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[290] Press Release, Office of Pub. Affairs, U.S. Dep't of Justice, Justice Department Announces New Accreditation Policies to Advance Forensic Science (Dec. 7, 2015), https://www.justice.gov/opa/pr/justice-department-announces-new-accreditation-policies-advance-forensic-science [https://perma.cc/PX2S-PTXP].

[291] *New NIST Center of Excellence to Improve Statistical Analysis of Forensic Evidence*, NAT'L INST. STANDARDS & TECH. (May 26, 2015), https://www.nist.gov/news-events/news/2015/05/new-nist-center-excellence-improve-statistical-analysis-forensic-evidence [https://perma.cc/ZQ67-2FTQ].

[292] *Organization of Scientific Area Committees for Forensic Science*, NAT'L INST. STANDARDS & TECH., https://www.nist.gov/forensics/organization-scientific-area-committees-forensic-science (last updated Nov. 18, 2016) [https://perma.cc/79E5-TXR4].

[293] *See* PRESIDENT'S COUNCIL OF ADVISORS ON SCI. & TECH., EXEC. OFFICE OF THE PRESIDENT, FORENSIC SCIENCE IN CRIMINAL COURTS: ENSURING SCIENTIFIC VALIDITY OF FEATURE-COMPARISON METHODS (2016), https://www.whitehouse.gov/sites/default/files/microsites/ostp/PCAST/pcast_forensic_science_report_final.pdf [https://perma.cc/GJV2-6A9V].

[294] *FBI/DOJ Microscopic Hair Comparison Analysis Review*, FBI, https://www.fbi.gov/services/laboratory/scientific-analysis/fbidoj-microscopic-hair-comparison-analysis-review [https://perma.cc/T347-V3PL].

[295] Press Release, Fed. Bureau of Investigation, FBI Testimony on Microscopic Hair Analysis Contained Errors in at Least 90 Percent of Cases in Ongoing Review (Apr. 20, 2015), https://www.fbi.gov/news/pressrel/press-releases/fbi-testimony-on-microscopic-hair-analysis-contained-errors-in-at-least-90-percent-of-cases-in-ongoing-review [https://perma.cc/5FW6-VMCM].

FBI provided testimony on microscopic hair analysis between 1972 and 1999.[296] This review helped lead to at least two exonerations, with several cases still pending. Earlier this year, DOJ also established a Forensic Science Discipline Review to institutionalize quality assurance in the practice of other forensic science disciplines across the Department.[297]

Strengthening the forensic sciences is a complex challenge that will continue to require work and a sustained commitment on the part of the federal government as well as the broader forensic science, legal, and judicial communities. Ongoing work to develop a research and development agenda for the forensic sciences will require the continued collaboration of federal, state, local, and tribal governments; academia; law enforcement; and industry experts to advance the scientific underpinnings of the forensic evidence and analyses used in courtrooms around the country.

E. Improve Criminal Justice Data Collection

My Administration has taken significant steps to improve the collection and release of criminal justice data, but we continue to have too little information to inform our policies. The Uniform Crime Report (UCR) is the leading source for National Crime Data. Historically, the UCR has relied primarily on the Summary Reporting System, which collects an aggregate monthly tally of crimes in just ten offense categories. But for decades there has been a more comprehensive and detailed collection, the National Incident-Based Reporting System (NIBRS), that has not been used broadly.[298] NIBRS significantly improves the quality of our crime data by providing much richer details, including the date, time, location, and circumstance of the crime as well as characteristics about the victim and offender and any relationship between them.[299] Yet only about a third of the nation's law enforcement agencies, covering 30% of the U.S. population, report to the

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[296] Spencer S. Hsu, *FBI Admits Flaws in Hair Analysis over Decades*, WASH. POST (Apr. 18, 2015), https://www.washingtonpost.com/local/crime/fbi-overstated-forensic-hair-matches-in-nearly-all-criminal-trials-for-decades/2015/04/18/39c8d8c6-e515-11e4-b510-962fcfabc310_story.html? [https://perma.cc/BXH2-WZCD].

[297] Notice of Public Comment Period on the Presentation of the Forensic Science Discipline Review Framework, 81 Fed. Reg. 20,675 (proposed Apr. 8, 2016).

[298] *Data Collection: National Incident-Based Reporting System (NIBRS)*, BUREAU JUST. STAT., http://www.bjs.gov/index.cfm?ty=dcdetail&iid=301 [https://perma.cc/38T7-BUTL] ("[T]he FBI stated that for 2012 a total of 6,115 law enforcement agencies reported their UCR crime statistics via NIBRS, out of 18,290 total police agencies participating in the UCR program. In 2012 NIBRS-contributing agencies served approximately 30 percent of the U.S. . . . ." (footnote omitted)).

[299] *A Word About NIBRS*, FBI, https://ucr.fbi.gov/nibrs/2012 [https://perma.cc/E3FR-9CPV].

FBI using NIBRS.[300] It is critically important to get the rest of the nation reporting in the same way. Four major law enforcement organizations — the International Association of Chiefs of Police, the Major Cities Chiefs Association, the Major County Sheriffs' Association, and the National Sheriffs' Association — recognize the importance of better crime data and have agreed that NIBRS should be the sole method of collecting data.[301] DOJ's Office of Justice Programs is currently working with DOJ FBI's Criminal Justice Information Services Division to further improve NIBRS and to help states and localities move to NIBRS by 2021.[302]

As Attorney General Lynch has argued, we also need accurate and comprehensive data on the use of force by law enforcement.[303] While it is clear that most interactions between law enforcement and civilians do not involve any use of force, it is important to ensure that every use of force is necessary and legal. The enactment of the Death in Custody Reporting Act of 2013[304] and the Department of Justice's efforts to implement that law[305] will help us monitor how many people die while incarcerated or detained, but every use of force is significant and should be understood and measured. In order for us to better understand when, how, and against whom force is used, the FBI has announced that it is going to start collecting use-of-force data.[306] It is crucial that we paint an accurate picture of what is actually happening. This voluntary collection has the potential to make the use of force even more rare and the devastating consequences of force even less likely.

F. Restore the Right to Vote of Those Who Have Paid Their Debt to Society

More than six million Americans — disproportionately people of color — cannot vote because of a felony conviction that disenfran-

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[300] *Data Collection: National Incident-Based Report System (NIBRS)*, *supra* note 298.

[301] Letter from James B. Comey, Dir., Fed. Bureau of Investigation, to State Uniform Crime Reporting (UCR) Program Managers (June 10, 2016), https://www.bjs.gov/content/pub/pdf/nibrs.pdf [https://perma.cc/B74A-2C43].

[302] *Id.*

[303] Press Release, Office of Pub. Affairs, U.S. Dep't of Justice, Justice Department Outlines Plan to Enable Nationwide Collection of Use of Force Data (Oct. 13, 2016), https://www.justice.gov/opa/pr/justice-department-outlines-plan-enable-nationwide-collection-use-force-data [https://perma.cc/KE8H-K5RL].

[304] Pub. L. No. 113-242, 128 Stat. 2860 (to be codified at 42 U.S.C. §§ 13727–13727a).

[305] Press Release, Office of Pub. Affairs, *supra* note 303 (describing "several steps by the Department of Justice to enable the nationwide collection of data on law enforcement interactions with civilians, including data related to the use of force by law enforcement officers").

[306] *National Use-of-Force Data Collection*, FBI, https://ucr.fbi.gov/use-of-force [https://perma.cc/57TC-ZBHY].

chises them.[307] Of these, half reside in just twelve states that restrict voting rights even for those who have completed their prison sentence and are no longer under correctional supervision.[308] As I've said before: "[I]f folks have served their time, and they've reentered society, they should be able to vote."[309] That is important to help those released from prison truly return as citizens. One of the most important rights in a democracy is the right to vote and participate in self-governance, and we should not be denying that right to those who have paid their debt to society.[310]

G. Make Better Use of Technology to Promote Trust in Law Enforcement

Among the most significant of the recommendations of my Task Force on 21st Century Policing were insights on how jurisdictions could utilize technologies such as body-worn cameras to improve community trust, transparency, and accountability. Body-worn cameras have been proven to have several benefits for law enforcement agencies, officers, and the community, and my Administration has been an early proponent of expanded use.[311] U.S. Customs and Border Protection (CBP) was an early federal proponent of the use of body-worn cameras.[312] In several research studies, body-worn cameras are shown to help decrease reported complaints about officers. In Rialto, California, community reports against law enforcement officers dropped nearly 88% after officers began using body-worn cameras.[313] Likewise, complaints about Phoenix Police Department officers decreased by 23% once the department's officers began using body-worn

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[307] JEAN CHUNG, THE SENTENCING PROJECT, FELONY DISENFRANCHISEMENT: A PRIMER, http://www.sentencingproject.org/publications/felony-disenfranchisement-a-primer (last updated May 10, 2016) [https://perma.cc/3JNX-GP8H].

[308] *Id.*

[309] Obama, *supra* note 11.

[310] Currently, two states go further and allow persons currently incarcerated for felony convictions to vote. *Felon Voting Rights*, NAT'L CONF. ST. LEGISLATURES (Sept. 29, 2016), http://www.ncsl.org/research/elections-and-campaigns/felon-voting-rights.aspx [https://perma.cc/U6F9-SF7E].

[311] Roy L. Austin, Jr., *Mike Brown Law Requires All State, County, and Local Police to Wear a Camera*, WHITE HOUSE (Aug. 13, 2014), https://petitions.whitehouse.gov/petition/mike-brown-law-requires-all-state-county-and-local-police-wear-camera [https://perma.cc/RQ6U-S75Q].

[312] Press Release, U.S. Customs & Border Prot., CBP Announces Way Forward on the Use of Body-Worn Cameras (Nov. 12, 2015), https://www.cbp.gov/newsroom/national-media-release/cbp-announces-way-forward-use-body-worn-cameras [https://perma.cc/Q5TK-R7UA].

[313] Barak Ariel et al., *The Effect of Police Body-Worn Cameras on Use of Force and Citizens' Complaints Against the Police: A Randomized Controlled Trial*, 31 J. QUANTITATIVE CRIMINOLOGY 509 (2015).

cameras, while other precincts whose officers did not use cameras saw a 45% increase in complaints during the same time frame.[314]

There is also emerging research that body-worn cameras can provide evidence for criminal prosecution. In the same study of the Phoenix Police Department, researchers found that domestic violence cases were more likely to be prosecuted and result in guilty verdicts when the officers at the scene were wearing cameras.[315] Issues of law enforcement accountability and community trust cannot be addressed solely through providing officers with body-worn cameras and asking them to activate their devices. As the Task Force described in its recommendations, this technology must be implemented (and the footage obtained stored) in cooperation with thoughtful policies, initiatives, and technological safeguards to ensure that civil rights are upheld, privacy interests are respected, and cameras are part of a cost-effective approach to transparency and public safety.[316] Departments whose officers are using body-worn cameras must also institute substantial community engagement efforts to help demonstrate to the public the necessity of the cameras and promote open communication about what the videos show.

My Administration has invested millions of dollars in not only deploying thousands of body-worn cameras to our law enforcement officers, but also promoting research and education so we can identify and scale the programs and policies that best enable our law enforcement officers to serve their communities and promote public safety. We built a comprehensive Body-Worn Camera Toolkit[317] to help communities implement body-worn camera programs. The federal government and our state and local partners must continue to work together to ensure that adequate funding is provided for body-worn cameras for the women and men that police our cities and towns. Government officials, law enforcement leadership and officers, advocates, and community members will also need to continue this dialogue as the technology of body-worn cameras evolves so that law enforcement can most effectively utilize this technology in ways that benefit departments and the communities they serve.

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[314] CHARLES M. KATZ ET AL., CTR. FOR VIOLENCE PREVENTION & CMTY. SAFETY, EVALUATING THE IMPACT OF OFFICER WORN BODY CAMERAS IN THE PHOENIX POLICE DEPARTMENT 8–9 (2015), https://publicservice.asu.edu/sites/default/files/ppd_spi_feb_20_2015_final.pdf [https://perma.cc/WV3U-TNY2].

[315] *Id.* at 10.

[316] 21ST CENTURY TASK FORCE REPORT, *supra* note 155, at 31–33.

[317] *See Body-Worn Camera Toolkit*, BUREAU JUST. ASSISTANCE, https://www.bja.gov/bwc [https://perma.cc/TA2C-YZZW].

CONCLUSION

There is so much work to be done. Yet I remain hopeful that together, we are moving in the right direction. Crime remains near historic lows, prison populations are decreasing, taxpayer dollars are being better spent, and more Americans are landing on their feet and taking advantage of the second chances they've earned. It's critical we build on this in the ways I've outlined above. But at the end of the day, those entrusted with influence over the direction of the criminal justice system must also remember that reform is about more than the dollars we spend and the data we collect. How we treat those who have made mistakes speaks to who we are as a society and is a statement about our values — about our dedication to fairness, equality, and justice, and about how to protect our families and communities from harm, heal after loss and trauma, and lift back up those among us who have earned a chance at redemption.