



# UNJUSTICE:

OVERCOMING TRUMP'S

# ROLLBACKS

ON YOUTH JUSTICE

CLASP

Policy solutions that work for low-income people

## ABOUT CLASP

The Center for Law and Social Policy (CLASP) is a national, nonpartisan, antipoverty organization advancing policy solutions for low-income people. We offer trusted expertise, a deeply knowledgeable staff, and a commitment to practical yet visionary approaches to opportunity for all. We lift up the voices of poor and low-income children, families, and individuals, equip advocates with policy ideas that work, and help public officials put good ideas into practice. Our solutions directly address the barriers that individuals and families face because of race, ethnicity, and immigration status, in addition to low income.

This brief is a part of CLASP's **Realizing Youth Justice** policy portfolio. Realizing Youth Justice is an advocacy framework aimed at disrupting the devastating impact that criminal and juvenile justice systems have on youth of color and low-income youth. CLASP believes that strengthening investments in workforce, education, health, and mental health is an anti-incarceration strategy that supports youth across the spectrum of justice involvement, including diversion and successful reentry.

# UNJUSTICE: OVERCOMING TRUMP'S ROLLBACKS ON YOUTH JUSTICE

by Kisha Bird, Duy Pham, and Justin Edwards

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# INTRODUCTION

## UNJUSTICE

The numerous abuses committed by the Trump Administration merit a new term: *Unjustice*. We define Unjustice as a return to past policies and behaviors that deemed some members of society unworthy of fair and equal treatment under the law. It is a horrific reminder of the power and authority unjustly wielded against communities of color by law enforcement throughout time. And it represents an unraveling of the criminal justice reform progress made in a range of states and communities from leaders of all political backgrounds who recognize both the moral and economic stakes of reverting to prejudiced criminal justice policies.

The start of the Trump Administration has sparked fear and uncertainty in communities of color and immigrants, among others. For some, it's a new and heightened sense of "otherness" threatening individual and family safety and well-being. For others, it's more of the same: hateful speech, destructive and discriminatory imagery, and harassment and even violence by law enforcement that has become all too common for people of color across generations. All the while, trust in law enforcement and our criminal justice system continue to erode. This tears at the very fabric of our democracy and makes all of us less safe.

The Trump Administration has been unrelenting in its return to frameworks and failed policies proven to criminalize and dehumanize communities of color. The rhetoric in tweets, speeches, and press statements has made the political climate ripe for advancing policies that roll back recent criminal justice reforms in favor of a "law-and-order" agenda.

These failed policies echo a modern-day political playbook ripped from the 1960s that vilified communities of color and further systematized racial inequities in the criminal justice system. The strategy exploits racial tensions to engender fear of Black and brown communities and generate greater support for policies that impede the success of these communities.<sup>1</sup> Law-and-order policies in this

### This brief:

- Examines selected United States Department of Justice (DOJ) policies and actions that have negative implications on youth and young adults of color;
- Provides youth, community advocates, and policymakers with an anti-incarceration framework that can be used to combat harmful law-and-order policies; and
- Urges investment in funding, policies and strategies that promote youth access to jobs, education, and healing.

context are used to make false connections between crime and race to justify fear-mongering and racist policies designed to hold communities of color back so that those in power are not threatened. The xenophobia also extends to religious groups, particularly Muslim communities, that have real and devastating impacts.

In particular, we consider the decision-making points that can affect young people of color and focus on the following “unjustice” areas:

- promising police reform strategies under threat;
- reversing progress in strategic prosecutorial choices; and
- criminalizing youth culture and youth of color.

## WHAT IS LAW-AND-ORDER?

Richard Nixon’s winning presidential campaign promised to restore “law and order,” which his administration did by increasing punishments for drug offenders, legalizing stop-and-frisk procedures, and restricting access to housing and employment for returning citizens—all of which disproportionately targeted African American communities. These and other policies did nothing to reduce crime rates and instead perpetually marginalized Black communities in a cycle that continues today.<sup>2</sup> The Clinton Administration’s 1994 crime bill extended these punishments in place of rehabilitative measures, driving the United States to the highest incarceration rate of any nation. Currently, 2.3 million people are incarcerated in a correctional facility.<sup>3</sup> Although reform efforts have reduced recent incarceration rates, racial disparities in incarceration—in particular for youth and young adults of color—have increased.<sup>4</sup>

The administration marginalizes youth of color through practices such as employing “zero-tolerance”<sup>5</sup> policies, forcing police to act as immigration agents without proper training, requiring mandatory minimum sentences, using brutal and inhumane conditions in prisons, and employing other racial profiling tactics.<sup>6</sup>

The Trump Administration has already left an unforgettable stain on our justice system. Through its efforts to decrease federal oversight of police, endorse regressive punishment and sentencing, divest in effective interventions, and promote a cycle of incarceration, the administration is wreaking havoc on communities of color. We must critically analyze how these backward movements *can and will* impact young people of color.

# ROLLING BACK PROGRESS: FROM RHETORIC TO POLICY CHANGE

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## THEY CALL ME 299-359

By DW

Orange jumpsuit, shower shoes,  
and an armband  
Guilty by appearance and judged  
by my race  
Guilty until innocent in the words  
of a D.A.  
Lost in a cold dream called prison  
Four sharp corners, eggshell  
paint, dusty gray floor  
No lights and a filthy toilet  
No tears, just my pen in action  
They call me 299-359...

*Published in They Call Me 299-359 Writings by the  
Incarcerated Youth of Free Minds Book Club &  
Writing Workshop*

The U.S. Department of Justice (DOJ) under the leadership of Attorney General Jeff Sessions repeatedly paints people of color as dangerous, uses misleading crime data, and makes false links between immigration and crime to incite fear.

The Department of Justice claimed that “The violent crime rate increased by 3.4 percent nationwide in 2016, the largest single-year increase in 25 years. The nationwide homicide rate increased by 7.9 percent, for a total increase of more than 20 percent in the nationwide homicide rate since 2014.”<sup>7</sup> However, while violent crime and murder did increase in 2015 and 2016, these trends warrant more investigation and are much more nuanced than the administration’s rhetoric leads the public to believe.<sup>8</sup> In addition, crime increases vary dramatically by locality and has increased primarily in four cities – Chicago, Baltimore, St. Louis and Milwaukee. The increases in these four cities accounted for 20 percent of the homicide increase and do not acknowledge that cities such as Dallas, Boston, and Los Angeles have successfully reduced violent crime over the same time period.<sup>9</sup>

Trump reinforces this rhetoric, stirring fear that violent crime has reached unprecedented levels, despite steadily decreasing over the last 25 years with minor one- or two year fluctuations.

**“The murder rate in our country is  
the highest it’s been in 47 years.”**

–President Trump, February 2017 in meeting with sheriffs  
at the White House

**Data show a decline in violence  
in major cities in 2017, and the  
homicide rate in major American  
cities continues to remain below  
its 1991 peak.<sup>10</sup>**



At the same time, the administration constantly makes false links to immigration and crime—particularly targeting immigrant youth by erroneously tying them to violent transnational gangs. Trump has repeatedly and deliberately associated violent gangs with immigration to demonize immigrant communities and pursue restrictions against distinct immigrant communities.<sup>11</sup> Overstating the threat of gang violence and stereotyping whole communities has broad impacts on all youth of color, particularly Black and Latinx youth,<sup>12</sup> that is often lost in the rhetoric.

**“Being soft on sentencing means more violent crime. It’s time to get tough again.”**

- Jeff Sessions June 16, 2017, Washington Post Op-ed

**“The Department of Justice is committed to working with our state, local, and tribal partners across the country to deter violent crime, dismantle criminal organizations and gangs, stop the scourge of drug trafficking, and send a strong message to criminals that we will not surrender our communities to lawlessness and violence.”**

-Jeff Sessions September 25, 2017

The very real threat to criminal justice reform progress isn’t coming just from the administration. Too many members of Congress refuse to hold this administration accountable, while some state and local governments have been emboldened by public support to carry out their own versions of injustice.

While we need federal, state, and local policies to protect against rolling back this progress, we also need a culture shift to create public will in support of the positive reforms.



## OUR CRIMINAL JUSTICE SYSTEM IS OUT OF CONTROL

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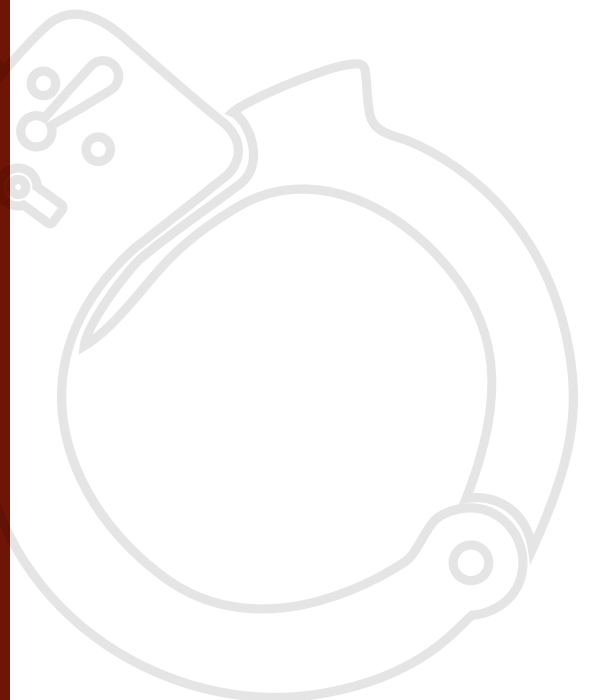
"On any given day, nearly 53,000 youth are held in facilities away from home as a result of juvenile or criminal justice involvement. Nearly one in ten is held in an adult jail or prison. Even for the youth held in juvenile "residential placement," the situation is grim; most of them are in similarly restrictive, correctional-style facilities. Thousands of youths are held before they've been found delinquent, many for non-violent, low-level offenses — even for behaviors that aren't criminal violations."<sup>13</sup>

-The Sentencing Project

"Young people ages **18 to 24** make up **10 percent** of the U.S. population but comprise **21 percent** of people admitted into adult prison every year. And of that, young men of color are overrepresented, with black men in this age group **7 to 9 times** more likely to end up in prison compared to their white peers."<sup>14</sup>

-The Vera Institute of Justice

Our criminal justice system is a complex maze. In it, varying players have discretion to make decisions that can lead to deeper involvement in the juvenile or criminal justice system or allow people to be diverted, receive treatment or community-based services, and engage in restorative justice strategies.<sup>15</sup> Even before entering the criminal justice system, many young people of color live in communities and attend schools that are over policed leading to interactions with law enforcement. They are more likely than their white counterparts to be referred to law enforcement from school<sup>16</sup> and arrested and stopped by police in public.







**BLACK YOUNG WOMEN ARE 19% MORE LIKELY TO BE STOPPED IN PUBLIC BY THE POLICE THAN WHITE YOUNG WOMEN**



**57% OF ARRESTS OF MALES 18-24 ARE OF YOUNG MEN OF COLOR**

### BLACK AND LATINO STUDENTS COMPRISE



MALE STUDENTS

**40%**



**47%**

REFERRALS TO LAW ENFORCEMENT

### BLACK AND LATINA STUDENTS COMPRISE



FEMALE STUDENTS

**40%**



**51%**

REFERRALS TO LAW ENFORCEMENT

Source: U.S. Department of Education, Office for Civil Rights, Civil Rights Data Collection, 2013-14, <https://ocrdata.ed.gov/>.  
United States Department of Justice Office of Justice Programs, Bureau of Justice Statistics, Police-Public Contact Survey, 2011, <https://www.bjs.gov/index.cfm?ty=dcdetail&iid=251>

Invasive contact and ever-present community and school surveillance by law enforcement also stimulates increased trauma and anxiety, often from a young age.<sup>17</sup> The trauma caused by law enforcement—in addition to the daily stressors young people face living in divested communities—can leave them feeling scared, isolated, depressed, and experiencing anxiety and post-traumatic stress disorder (PTSD) symptoms, which can lead to increased interactions with law enforcement. Furthermore, the trauma experienced from incarceration has profound effects on young people. Studies show young adults are more likely to be rearrested when they leave prison than any other age cohort.<sup>18</sup>

Our incarceration problem is indefensible and unsustainable. Though criminal justice reform has bipartisan support, we must address and reverse the systems and policies that contribute



to racial inequities and bias in the criminal justice system. Recently, a group of governors representing vastly different parts of the country and political leanings found common ground in reentry and criminal justice reforms.<sup>19</sup> They agreed, for example, on the importance of workforce development, education and training, and fair hiring practices. While this is laudable, their consensus does not consider the precursors that funnel people into our criminal justice system and make it more likely young people of color will be targeted and unjustly treated. And it's rare that discussions around these reforms acknowledge the humanity and promise of young people of color and the value of their current and future contributions to the social and economic fabric of our nation. Without incorporating that basic premise, these reform efforts can be interpreted as mere window dressing.

Our decision-making chart (See Figure 1) recommends important levers for systemic policy and institutional behavioral change. Some experts argue that the biggest opportunity to address our mass incarceration problem is through prosecutorial authority and discretion. Still others feel that policing reform warrants the most intervention. Regardless, any strategy should include a predisposition to diversion, which means not arresting or detaining young people for status offenses<sup>20</sup> or through policing practices such as stop and frisk.<sup>21</sup> Diversion also means being intentional about understanding the long-term consequences of zero-tolerance policies and legislation. In addition, this strategy includes large-scale investments in diverting youth and young adults to supports that enhance their wellbeing and address their individual trauma. These efforts should be within the young peoples' communities and focus on strong youth development, workforce, education, service, and training opportunities. All these interventions should be designed to build on youth's resiliency, assets, and experiences, rather than focus on their deficits.

Decades of research have shown that expanded police capacity and harsher sentencing practices have done little to reduce crime and have instead increased recidivism and created an unsustainable and unethically large prison population. Nonetheless, the administration continues to advocate for punitive policies aimed at communities of color.

Racial bias marginalizes youth and young adults of color at each point on this graphic. Criminal justice reform requires attention at every stage. Advocates and policymakers must be intentional about pushing for actionable changes within the current system while at the same time working to abolish racially biased policies and reconstructing a new vision of justice for youth.

**Figure 1.**

Decision-making levers that disproportionately punish youth and young adults of color



# SELECTED TRUMP ADMINISTRATION “UNJUSTICE” ACTIONS<sup>22</sup>

## 2017

### JANUARY 27

Trump signs the first version of his Muslim travel ban that discriminates against Muslims and banned refugees.

### FEBRUARY 9

Trump signs three executive orders “to fight crime, gangs, and drugs; restore law and order; and support the dedicated men and women of law enforcement.”

### MARCH 31

Sessions orders a review of consent decrees with law enforcement agencies about police conduct—a crucial tool the DOJ uses to ensure constitutional and accountable policing. The department also tries, unsuccessfully, to block a federal court in Baltimore from approving a consent decree between the city and the Baltimore Police Department to rein in discriminatory police practices that the Justice Department itself had negotiated over a multi-year period.

### MAY 12

Sessions announces in a two-page memo that DOJ is abandoning its Smart on Crime initiative that had been hailed as a positive step in rehabilitating individuals with substance abuse disorders and reducing the costs of housing inmates.

### SEPTEMBER 5

Sessions announces the administration is rescinding the Deferred Action for Childhood Arrivals (DACA) program.

### SEPTEMBER 15

The Department of Justice ends the Community Oriented Policing Services’ Collaborative Reform Initiative, a program to help build trust between police officers and the communities they serve.

### OCTOBER 8

The White House releases a list of hardline immigration principles – demands that include funding a border wall, deporting Central American children seeking sanctuary, and curbing grants to sanctuary cities.

### DECEMBER 21

Sessions rescinds 25 guidance documents, including a letter sent to chief judges and court administrators helping state and local efforts to reform harmful practices on the assessment and enforcement of fines and fees, including for youth.

# 2018

## JANUARY 4

Sessions rescinds guidance that allowed states to legalize marijuana with minimal federal interference. This has disproportionate impact on youth of color.

## MARCH 12

Sessions announces the Justice Department's "school safety" plan, which civil rights advocates criticize as militarizing schools, over-policing children, and harming students—disproportionately students of color.

## MARCH 12

Trump establishes a Federal Commission on School Safety, which includes directives to repeal the Obama Administration's "Rethink School Discipline" policies. These policies provided alternatives to suspensions and expulsions and highlighted data showing that students of color (particularly African-American boys) and those with disabilities were up to three times as likely as white students to be punished this way, often for similar nonviolent offenses.<sup>23</sup>

## APRIL 6

Sessions notifies all U.S. Attorneys' offices along the Southwest border of a new "zero tolerance" policy toward people trying to enter the country—a policy that quickly, and inhumanely, separates hundreds of children from their families.

## JUNE 26

Supreme Court upholds Trump's Muslim Ban.

## JULY 3

Sessions rescinds 24 internal guidance documents. Seven relate to the work of the Justice Department's Office of Juvenile Justice and Delinquency Prevention, including policy guidance on juveniles who are held in adult jails and a manual on disproportionate minority contact. Other rescinded guidance addressed reducing housing discrimination and racial discrimination in education.<sup>24</sup>

# PROMISING POLICE REFORM STRATEGIES UNDER THREAT

## CONSENT DECREES

Consent decrees are court-ordered agreements between the DOJ and law enforcement agencies that make structural reforms to local policing practices and policies that respect the rights of all community members. They are one of the justice system's tools for advancing equity and structural reform and addressing and ending abuses, particularly on unfair police practices toward African Americans and other communities of color.<sup>25</sup> Under the Obama Administration, the Justice Department's Civil Rights Division investigated over 20 police departments that at times culminated in consent decrees.<sup>26</sup> The consent decrees serve as agreements between DOJ and local police departments to address problems and are a crucial tool to ensure constitutional and accountable policing.

### Benefits of Consent Decrees

- Building trust and legitimacy among law enforcement and the community.
- Facilitating collaboration and cooperation with community members.
- Developing clear and comprehensive policies on the use of force (including training on the importance of de-escalation), mass demonstrations (including the appropriate use of equipment, particularly rifles and armored personnel carriers), consent before searches, gender identification, racial profiling, and performance measures— among others.
- Ensuring policies are maintained and current. For example, law enforcement agencies periodically review policies and procedures and establish civilian oversight mechanisms with their communities.
- Addressing unfair fine and fee policies and practices that disproportionately affect communities of color.<sup>27</sup>



## TRUMP ADMINISTRATION “UNJUSTICE” ACTION

Sessions voiced concern over police oversight investigations during his confirmation hearing, testifying that federal lawsuits against local law enforcement could **“undermine the respect for police officers and create an impression that the entire department is not doing their work consistent with fidelity to law and fairness.”**

In a March 2017 memo, Sessions ordered a sweeping review of consent decrees with law enforcement agencies about police conduct.<sup>28</sup> Soon after that, he announced the department’s withdrawal from consent decrees and DOJ investigations into city police departments. DOJ also unsuccessfully tried to block a federal court in Baltimore from approving a consent decree between the city and the Baltimore Police Department that was set to rein in discriminatory police practices that the DOJ itself had negotiated over a multi-year period.<sup>29</sup> He added: “It is not the responsibility of the federal government to manage non-federal law enforcement agencies.” Instead, “local control and local accountability are necessary for effective policing”.<sup>30</sup>

## FOCUS ON BALTIMORE

According to Department of Justice findings during the Obama Administration, the Baltimore Police Department (BPD) engaged in a pattern of discriminatory practices and illegal activities, causing youth, especially young adults of color to be victims of:

- Unconstitutional stops, searches, and arrests;
- Enforcement strategies that produced severe and unjustified disparities in the rates of stops, searches, and arrests of African Americans;
- Excessive force; and,
- Retaliation because of engaging in constitutionally protected expression.<sup>31</sup>

Furthermore, young people of color are not the only population subject to these abuses. The report found that BPD engaged in excessive and unreasonable force against people with mental-health disabilities.

Fortunately, the current leadership of the City of Baltimore and the BPD are taking some steps to reverse this course despite Sessions’ efforts. These include BPD’s revised use of force policies and steps toward enhancing accountability and transparency throughout the department. However, significant challenges remain.



## IMPLICATIONS FOR YOUNG PEOPLE OF COLOR

The withdrawal of the DOJ from supporting consent decrees rolls back progress in community-police relations and civil rights in many communities. It also puts young people—particularly young men of color—at greater risk of unconstitutional discrimination by law enforcement. Removing the teeth from DOJ’s authority to use this effective tool for positive transformation leaves youth of color vulnerable with little recourse when facing such actions as:

- unconstitutional stops, searches, and arrests;
- enforcement strategies that produce severe and unjustified disparities in the rates of stops, searches, and arrests;
- debt or incarceration due to fines and fees; and
- excessive force.<sup>32</sup>

Further, fines and fees levied by local communities and carried out by law enforcement greatly impact communities of color. For example, a study in Alameda County, California, found that youth of color incurred higher juvenile administrative fees<sup>33</sup> than white youth. **Black youth paid an average of \$3,295, Latino youth paid \$2,534, Asian youth paid \$2,269 and white youth paid \$1,665.**<sup>34</sup>





## BLUE LIVES MATTER

“Blue Lives Matter” policies and laws seek to make police a protected class. They roll back police oversight and disregard the very visible violence young people of color, particularly Black youth and adults, experience at the hands of law enforcement. The policies and rhetoric unnecessarily pit advocates for racial justice and improvements in police-community relations against law enforcement officers and those who fear “anti-police” reforms.

In February 2017, Trump signed a series of executive orders directing DOJ to create a task force on crime reduction and public safety, along with a new initiative on punishing people who have committed crimes against law enforcement officers.<sup>35</sup> Although improved police-community relations and officer safety are not conflicting principles, Trump’s executive orders send the message that the administration and the public should shield police against criticism, thereby preventing oversight and accountability and empowering racism and violence by law enforcement. They also disproportionately harm youth and young adults of color, as they are more likely to come in contact with law enforcement and abuse.<sup>36</sup>

Congress has backed the president’s rhetoric by introducing the “Back the Blue Act of 2017,” which would establish new federal crimes for assaulting or killing law enforcement officers and broaden the authority of federal officers to carry firearms. Additionally, the Senate version of the “Protect and Serve Act of 2018” would make law enforcement a protected class and designate violence against police a hate crime.

Several states—Georgia, Louisiana, Texas, Kentucky, Wisconsin and Mississippi—have introduced or amended laws that would make law enforcement officers a protected class.



# REVERSING PROGRESS IN STRATEGIC PROSECUTORIAL CHOICES

## SCALING BACK PROSECUTORIAL DISCRETION

Prosecutorial authority is the power of prosecutors to exercise discretion in pursuing a case. This can include broad discretion over charges, plea offers, sentencing, and diversion. With this power, prosecutors are uniquely positioned to address mass incarceration and restorative justice, both of which drastically affect youth and young adults of color.

## SMART JUSTICE: PROSECUTORIAL DISCRETION

In 2013, then Deputy Attorney General James Cole issued a directive, dubbed the “Cole Memo,” which granted federal prosecutors the discretion not to prosecute marijuana offenses if such actions comply with state law, do not involve violence, do not fund the trade of more serious drugs, and do not otherwise implicate federal priorities. Another 2013 policy directive issued by Attorney General Eric Holder as part of his Smart on Crime initiative gave prosecutors the discretion in some lower-level drug cases to bring lesser charges to avoid triggering mandatory minimum sentences. In Holder’s words, the policy was intended to “ensure that our most severe mandatory minimum penalties are reserved for serious, high-level, or violent drug traffickers.” Drug possession is the most widely arrested offense in the U.S., and arrests, incarceration, and deportation for low-level drug offenses have disproportionately affected communities of color, despite similar rates of usage among whites.<sup>37</sup>

## TRUMP ADMINISTRATION “UNJUSTICE” ACTION

In May 2017, Sessions directed federal prosecutors to “charge and pursue the most serious, readily provable offense” in every criminal case, overruling a 2013 DOJ policy statement.<sup>38</sup> He later wrote that an increase in the use of mandatory minimums is necessary to address their false claims of rising crime.<sup>39</sup> Attorney General Sessions also repealed the Cole Memo, allowing U.S. Attorneys to prosecute marijuana offenses even when they conflict with state law. Sessions maintains that this step returns the country’s “rule of law” and restores federal supremacy in drug policy.<sup>40</sup>

In addition, Sessions and Trump have appointed a cadre of like-minded law-and-order attorneys. United States Attorneys are the chief federal law enforcement officers serving in states across the country. Of the 93 U.S. Attorney positions, Trump has nominated 78, and 69 have been confirmed by the Senate.<sup>41</sup> DOJ has also hired more than 311 Assistant U.S. Attorneys—the largest increase in decades—to focus on three areas consistent with its flawed law-and-order strategy: violent crime, immigration crime, and “civil enforcement” (a.k.a. drug enforcement). Sessions has accomplished this hiring, in part, by redirecting or repurposing departmental resources.<sup>42</sup> The Department of Justice’s 2018 budget request proposed \$1.5 billion in funding reallocations and \$702 million in reductions. This included a proposal to eliminate many discretionary programs aimed at improving police accountability and supporting diversion and reentry.<sup>43</sup>

## IMPLICATIONS FOR YOUNG PEOPLE OF COLOR

Sessions’ rescission of the Obama-era guidance to eliminate mandatory minimum sentences for low-level, nonviolent drug offenses returns us to an era of excessive punishments that has exacerbated mass incarceration and the unjust racial profiling and discrimination that persist in our justice system. Mandatory minimums worsened punishments for youth and young adults of color without providing solutions or addressing root causes, especially following the series of reforms in the 1994 Crime Bill<sup>44</sup> and “tough-on-crime” policies.<sup>45</sup> This included efforts such as states trying children and youth as adults and sweeping mandatory minimum sentencing for low-level drug offenses and usage.

Studies have shown that prosecutors are 75 percent more likely to file charges carrying mandatory minimum sentences against Black men than white men.<sup>46</sup> Research also proves that mandatory minimums applied to youth encourage prosecutors to punish adolescents as adults.<sup>47</sup> Many states have scaled back mandatory minimums and, when paired with other reforms, have ultimately reduced the number of youth who are unnecessarily incarcerated. However, youth of color continue to be targeted and disproportionately penalized. Forty-four percent of youth in juvenile facilities are African American, even though African Americans comprise only 16 percent of all youth in the United States.<sup>48</sup>



Significant disparities in arrest rates for drug offenses have historically marginalized communities of color, despite similar drug usage rates among whites and non-whites. Decriminalization of marijuana in several states has attempted to reverse some of these trends. However, rescission of the Cole Memo will undoubtedly have a disparate impact on young people of color.

Several states have gone a step beyond decriminalization to legalize marijuana, which has reduced the total number of arrests for marijuana-related offenses and, in some states, reduced the number of youth and adults who are stopped and arrested for marijuana offenses. However, despite similar rates of use and sales across racial groups,<sup>49</sup> Black community members continue to be targeted and disproportionately penalized.<sup>50</sup> For example, in Colorado, Black individuals went from being arrested at nearly three times the rate of whites to now being arrested at twice the rate of whites in the years after legalization. In Washington, D.C., Black individuals are still 11 times more likely than whites to be arrested for public marijuana consumption, despite marijuana usage being consistent among the demographics and marijuana being legal in D.C.<sup>51</sup>

The long-term effect of Sessions' directive to federal prosecutors to "charge and pursue the most serious, readily provable offense" in every criminal case is yet to be seen. However, in the wake of Sessions' support of mandatory minimums, several states have introduced or passed mandatory minimum legislation that would harm all those involved in the justice system, particularly youth of color. Such legislation would also reverse efforts to combat substance abuse and addiction.<sup>52</sup>

## LOCAL PROGRESS: DAs AT THE CENTER OF CHANGE AND REFORM

Although the administration has sought to limit prosecutorial discretion at the federal level, local prosecutors are making progress in using their prosecutorial authority to divert youth from the justice system and reduce punishments from mandatory minimums. In recent years, a wave of new district attorneys (DAs) have pushed back against tough-on-crime policies. From Philadelphia to Houston's Harris County to Chicago to Orlando, these reformers are looking to support diversion and community-based programs, roll back mandatory penalties, decriminalize certain crimes—such as marijuana possession—and strengthen reentry services and supports.<sup>53</sup>





## RESCINDING OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION (OJJDP) GUIDANCE

Reforms in juvenile justice have been one of criminal justice's most bipartisan policy areas. States, counties, and cities are closing youth prisons, moving to more community-based alternatives to incarceration, and using restorative justice and diversion interventions.<sup>54</sup>

The Juvenile Justice and Delinquency Prevention Act (JJDP), which passed Congress with overwhelming bipartisan support, provides federal standards for youth in care and custody. JJDP also upholds the interests of community safety and the prevention of victimization.

Yet, Sessions rescinded 24 Department of Justice guidance documents<sup>55</sup> related to status offenders, disproportionate minority contact, and jail removal and separation core requirements.<sup>56</sup> The rescinded documents were intended to strengthen JJDP. Under JJDP, states must comply with four pillars of protections for youth involved in the justice system: Deinstitutionalization of Status Offenders, Adult Jail and Lock-Up Removal, "Sight and Sound" Separation, and Disproportionate Minority Contact.<sup>57</sup>

Some of the rescissions are consistent with OJJDP's announcement about reducing reporting requirements for data on youth interactions with the justice system that are intended to reduce disproportionate minority contact.<sup>58</sup> Under OJJDP guidance, states report rates of youth involvement at several decision points, such as referrals to juvenile courts, diversion programs, or probation. When broken down by race, these data highlight racial and ethnic inequities throughout the juvenile justice system and give state leaders a starting point for investigating and rectifying the causes of disparities. Furthermore, the rescinded guidance affects the other pillars of JJDP.



# CRIMINALIZING YOUTH CULTURE AND IMMIGRANT YOUTH

## GANG ENHANCEMENTS

Gang enhancements are reminiscent of 1980s laws responding to gang violence that allowed prosecutors to impose harsher sentences for crimes involving arbitrarily defined gang affiliation. However, determining proven gang affiliation is not so simple. Police and prosecutors alike have implicated innocent people simply because somebody in their family or neighborhood was in a gang, or because they were wearing certain brands, logos, or styles. These gang enhancement laws ultimately penalize youth for environmental factors outside of their control and for youth culture. Currently, a majority of states have gang enhancement laws.<sup>59</sup> They are not new, but they have always been problematic and threaten the security of young people of color.

## EFFECTS OF CALIFORNIA GANG ENHANCEMENTS

As a response to rising crime rates, California legislators instituted “gang enhancements” under the Street Terrorism Enforcement Prevention (STEP) Act in 1988 that allowed prosecutors to increase punishments for adult defendants, including youth prosecuted as adults, if they faced gang allegations. However, the STEP Act’s mandatory minimums led to excessive sentences and police and prosecutorial abuse of power that overwhelmingly targeted young men of color. The act loosely defines “gang” membership as “a formal or informal group of three or more, sharing a common identifying name, symbol or sign, and whose primary activity is crime.” Law enforcement agencies maintain gang databases that prosecutors use to identify gang affiliation.<sup>60</sup>

However, gang databases significantly overrepresent Black and Latinx youth because they are disproportionately targeted. These inaccurate databases have encouraged police to target young men of color with little or no evidence of gang involvement. In fact, 2015 data show over 85 percent of identified gang members or affiliates in the California state database are reported to be Black or Hispanic.<sup>61</sup> This database has led to continued unjust racial profiling and longer sentences for young men of color, despite research showing that white youth comprise the largest percentage of adolescent gang membership. This database has led to continued unjust racial profiling and longer sentences for young men of color, despite research showing that white youth comprise the largest percentage of adolescent gang membership.<sup>62</sup>



## TRUMP ADMINISTRATION “UNJUSTICE” ACTION

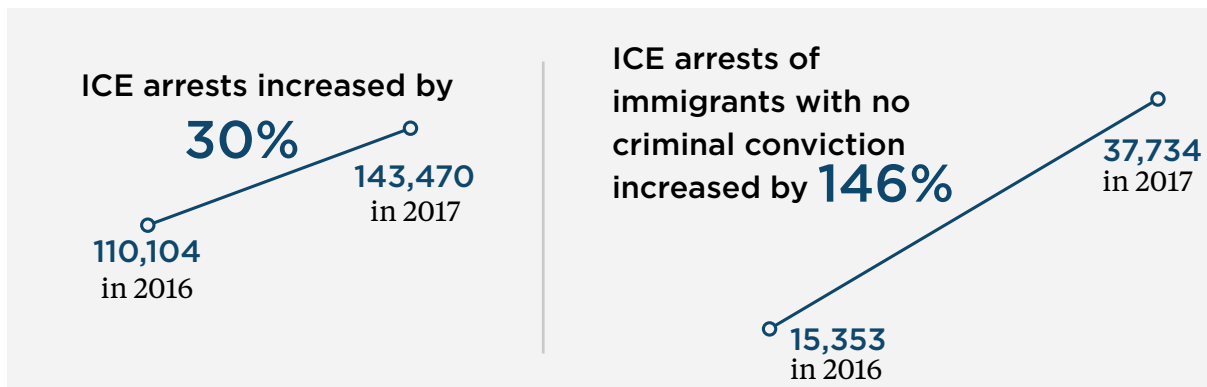
Many of the most threatening and transparent actions of the Trump Administration directly target immigrant communities. What started in the campaign as racist attacks on immigrants has translated into the administration actively pushing a false theory that immigration causes crime and painting immigrant youth as dangerous gang members. The administration has criminalized immigrant youth as a part of its strategy to push nationalist immigration policies that are devastating youth and young adults of color, regardless of immigration status.<sup>63</sup>

**“I am calling on the Congress to finally close the deadly loopholes that have allowed MS-13 and other criminal gangs to break into our country,”**

– President Trump, 2018 State of the Union address

The president refers to gang members as “animals” and repeatedly mentions gang violence when talking about immigration to advance his agenda. Jeff Sessions also says the administration is working “to examine the unaccompanied minors issue and the exploitation of that program by gang members who come to this country as wolves in sheep clothing.”<sup>64</sup>

As one of his first presidential acts in January 2017, Trump signed an executive order—“Enhancing Public Safety in the Interior of the United States”<sup>65</sup>—that directed the Department of Homeland Security (DHS) to “make public a comprehensive list of criminal actions committed by aliens,”<sup>66</sup> despite research showing undocumented immigrants commit crimes at a lower rate than American citizens.<sup>67</sup> Through this order the administration created the Victims of Immigration Crime Engagement (VOICE) office that tracks and publishes crimes committed by immigrants. This assumes all immigrants are public safety threats, despite the crimes are largely nonviolent offenses and conflate traffic violations with more serious acts.<sup>68</sup> Acting under the executive order, Immigration and Customs Enforcement (ICE) has substantially increased its activity in the United States, leading to an unprecedented increase in arrests of immigrants with no criminal convictions. This has led to more immigrants in detention facilities, but fewer deportations.<sup>69</sup>



Source: U.S. Immigration and Customs Enforcement, “Fiscal Year 2017 ICE Enforcement and Removal Operations Report,” December 13, 2017, <https://www.ice.gov/removal-statistics/2017>.

Working in concert with DHS and ICE while redirecting DOJ resources, Sessions is driving up arrests and deportations of undocumented immigrants. In addition, new grant solicitations from DOJ have included language that would give applicants preference for agreeing to work with immigration authorities.<sup>70</sup> This includes OJJDP grants that should be focused on comprehensive approaches to prevention and intervention.<sup>71</sup>

Furthermore, Sessions' "zero tolerance" border policy led to the highly publicized imprisonment and separation of thousands of children and families. The stated intent of the policy was to deter future migration, ignoring the fact that most of the children and families are asylum seekers.<sup>72</sup> Simultaneously, he has made an unprecedented move to inject himself and his office into the decision making of immigration court cases.<sup>73</sup>

"My lungs gasp for freedom, but the air is toxic, saturated with intolerance. It's crippling. Preposterous. We feel the flare of hatred in our lungs like acidic phosphorous. So, let us scream our lungs out, we don't need that in our system. Stop wait a minute. I hear more nonsense. Are you saying we're candidates for deportation? Soon to be statistics for the data on mass incarceration? Repatriation? All I know is this land. This country. Please stop this. These aren't exaggerated lyrical gesticulations. I hear the screams of desperation, echoed in a detention center where children suffer brain changing implications. This breaks my consciousness. What else are we given here? Cognitive abrasions, skin deep lacerations by a status that's caused anguish and separation."

-Anonymous DACA Recipient



## IMPLICATIONS FOR YOUNG PEOPLE OF COLOR

The devastating effects of the administration's dehumanizing rhetoric on immigrant youth of color are immoral. Strong evidence suggests the Trump Administration's enforcement tactics have had significant effects on the behavior of immigrants and the Hispanic community in this country.<sup>74</sup> Although this rhetoric has proven devastating for Latinx youth, the implications permeate all communities of color.

According to the Immigrant Legal Resource Center, immigration officials have falsely accused immigrant youth of gang involvement, which has led to their detention, deportation, and/or denial of immigration benefits for which they would otherwise be eligible. Current law allows immigration officials to offer flimsy or false evidence of gang involvement and to take a wide and largely incontestable interpretation of the term.<sup>75</sup>

Trump's rhetoric on the need for harsher penalties for gang members fails to learn from past policies that disproportionately punished youth of color. African American and Latinx youth are often associated with gangs by police because of their race and where they live, even though research shows that white youth comprise the largest percentage of adolescent gang membership.<sup>76</sup> States exacerbate the disparities of youth of color in the criminal justice system by passing gang enhancement laws. At least 30 states mandate harsher sentences for individuals with varying levels of gang affiliation, and several states have introduced additional enhancements following Trump's rhetoric on gangs.<sup>77</sup>

## STATES HAVE ATTEMPTED TO STRENGTHEN CURRENT GANG ENHANCEMENT LAWS

North Carolina recently passed a law that would increase punishments for gang-affiliated individuals that relies on an expanded list of criteria including clothes, tattoos, and language used. This is an attack on youth culture. As seen in California, this likely will result in young Black and brown youth being disproportionately profiled as gang members, leading to longer sentences and higher rates of recidivism that often follow longer sentences.<sup>78</sup>

A gang enhancement law passed the Mississippi Senate in 2018 before ultimately failing in the House that would have redefined a gang as "an association of three or more persons whose members are involved in criminal gang activity and who collectively identify themselves as adopting a group identity."<sup>79</sup> The state has had a gang enhancement law since 2010 that has been applied almost exclusively to Black individuals. From 2010 to 2017, all 97 people processed under the law were Black, despite a report by the state's gang assessment unit finding that over half of gang members in the state are white. Some supporters of the stricter law tried to justify it as a way to arrest more white people;<sup>80</sup> however, the impact and punishments would clearly be felt extensively on Black and brown youth.



# TOWARD AN EXPANDED ANTI-INCARCERATION AND REINVESTMENT STRATEGY

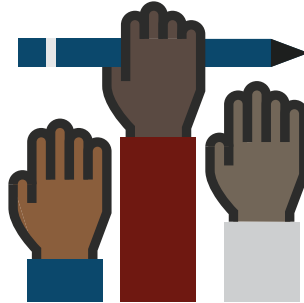
Despite these federal and state actions, many people are fighting back. States and communities, criminal justice and youth advocates, law enforcement stakeholders, and young people are working for policies and investments that can and will make a difference for young people of color.

CLASP believes policy strategies that envision supports for work, education, health, and mental health are critical for dismantling structural barriers that push youth of color out of school and into detention and incarceration. These barriers also prevent youth of color from obtaining employment and entering careers with family sustaining wages, which can perpetually lock them out of opportunity.<sup>81</sup> Of course, we must continue to prioritize policing and sentencing reform. But we must also examine how state and local level investments and policies can prevent youth of color from entering the juvenile or criminal justice system in the first place and how policies can better support youth during and after detention, placement, and/or incarceration. To realize this vision, we offer an anti-incarceration and reinvestment strategy and initial civic engagement actions to take.

## CORE ELEMENTS OF THIS FRAMEWORK INCLUDE:



Build large-scale employment and postsecondary pathways to good jobs and careers that reach young people at risk of justice system involvement and those who are already involved.



Redesign education strategies to keep young people engaged and re-engage those who are out of school while also reforming school discipline policies and practices, which contribute to the pathway to prison.



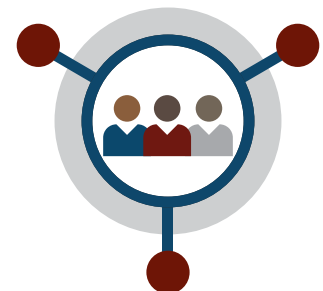
Address mental health needs by seizing opportunities through the Affordable Care Act and Medicaid and incorporating peer support and trauma-informed strategies.



Recognize points when youth and young adults experience trauma in their communities. Provide peer support, and other youth development programs to help them move through hardships with a strengths-based view.



Create new and expanded funding streams at local, state, and federal levels that can achieve the scale required.

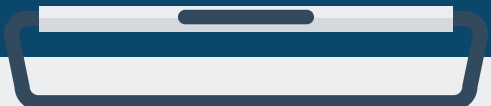


Explore governance approaches at the local, state, and federal levels to create connections across sectors that meet the needs of youth.<sup>82</sup>

## ACTIONS TO TAKE:

### LEADERSHIP, CIVIC ENGAGEMENT, PARTNERSHIP, AND INVESTMENT

This framework emphasizes how expanded investments in youth-serving systems—including workforce development, education, and health care—can coordinate across a systemic anti-incarceration strategy. In the current context, an investment framework also requires defending against broader attempts to undermine smart policing and civil rights as well as against unjustified budget cuts and structural changes that would undermine youth systems and services.<sup>83</sup>

- 
- ☐ Examine the commitment of law enforcement and state and local policymakers to researching, implementing, and investing in 21st century policing strategies.<sup>84</sup>
  - ☐ Assess and document public statements and policies of chief law enforcement officials that address mass incarceration and reduce mandatory minimums. For example, do they:
    - Decline to charge certain offenses, such as marijuana possession?
    - Reduce sentences for certain charges, such as misdemeanors?
    - Use greater flexibility for diversion?
    - Reduce or eliminate their ability to charge youth as adults in the criminal justice system?
  - ☐ Review and analyze existing and newly proposed state gang enhancement laws.
    - Do the data support the current provisions?
    - Are there race and gender disparities?
    - Have you checked for unintended consequences?
    - Do they balance prevention, intervention and suppression tactics?
    - Do they exacerbate racial biases?
  - ☐ Establish accountability safeguards and standards to reduce and eliminate racial disparities in the juvenile and criminal justice system.
  - ☐ Build partnerships across agencies and stakeholders to make criminal justice reform and reinvestment a priority, as demonstrated by state, county, and city budgets, as well as the state and local legislative agenda.<sup>85</sup> Stakeholders should include youth and community advocates, families and individuals affected by the justice system, governors, mayors, county executives, and lawmakers.
  - ☐ Ensure savings from criminal justice reforms are redirected to youth prevention and reentry strategies with an emphasis on workforce development, education reengagement, postsecondary pathways, positive youth development, and mental health and wellbeing services.<sup>86</sup>
  - ☐ Establish state, county, and/or city plans that address economic mobility for low-income youth and young adults and target resources to communities most affected by over-criminalization, incarceration, and community violence.



## CONCLUSION

Fortunately, we are at an important moment with an opportunity for change. This momentum is coming from reform-minded DAs, state legislators, and state executive branch leaders working to reduce the prison population and make smarter investments in response to crime. It is also coming from youth and community advocates and leaders doing incredible work to close youth prisons and reimagine incarceration for young adults in our adult criminal justice system.

The challenge before the collective us: How do we effectively recognize and thwart negative messaging and policy proposals while also advancing a comprehensive vision for youth justice investment that is actionable and holds all stakeholders accountable?

We do not claim to know all the answers. What we know is that the change we envision for youth and their communities will not come without political will and leadership, intentional pressure and partnership at all levels. What is needed is a menu of policy solutions and interventions that work, and public and private investments at scale. Our hope is that this brief can be a catalyst for civic engagement, the development of equitable youth policy investments, and the rebuilding of a vision created with young people in the pursuit of safety, well-being, and economic and racial justice.

Holding the line on successful criminal justice reforms over the past decade and mitigating the harm unleashed by the Trump Administration's Unjustice Department will require carefully documenting the rollbacks and ensuring that state and local policy does not follow its lead. It also requires vigilance on the part of young people, elected officials, community leaders, youth-serving agency leads, and program staff. We can have a huge potential impact if we get this right. And lives are on the line if we don't.





## ACKNOWLEDGEMENTS

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The authors of this report would like to thank the following colleagues and partners for their editorial review: Kisha Brown, Justis Connection and Former Director of the Baltimore City Office of Civil Rights and Wage Enforcement; Jamira Burley, Head of Youth Engagement and Skills, Global Business Coalition for Education; Terry Green, CEO and Founder, Think Make Live; Rachel Marshall, Federal Policy Counsel, Campaign for Youth Justice; Marcy Mistrett, CEO, Campaign for Youth Justice; and Manar Waheed, Legislative and Advocacy Counsel, ACLU. We also thank Danielle Miles for her design of the report.

We would also like to thank all our CLASP colleagues and consultants for their feedback and support in the development of this report: Andy Beres, Whitney Bunts, Wendy Cervantes, Angela Hanks, Shae Harris, Olivia Golden, Tanya Goldman, Hannah Matthews, Marlén Mendoza, Tom Salyers, Barbara Semedo, Paige Shortsleeves, Noel Tieszen, Nia West-Bey, and Isha Weerasinghe. Lastly, we would like to the Andrus Family Fund for their support of CLASP's youth policy portfolio.

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## ENDNOTES

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<sup>16</sup> As defined by the U.S. Department’s Office of Civil Rights, referral to law enforcement is an action by which a student is reported to any law enforcement agency or official, including a school police unit, for an incident that occurs on school grounds, during school-related events, or while taking school transportation, regardless of whether official action is taken.

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<sup>80</sup> Donna Ladd, "Only Black People Prosecuted Under Mississippi Gang Law Since 2010," Jackson Free Press, March 29, 2018, <http://www.jacksonfreepress.com/news/2018/mar/29/only-black-people-prosecuted-under-mississippi-gan/?eType=EmailBlast-Content&Id=5044b3c6-82ec-4787-8165-ec65f83234f4>.

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<sup>83</sup> Nia West-Bey, Clarence Okoh and Kisha Bird, *Realizing Youth Justice: Guiding Principles for Advocates in the Trump Era*.

<sup>84</sup> President's Task Force on 21st Century Policing, *Final Report of the President's Task Force on 21st Century Policing*.

<sup>85</sup> Youth First and the Center on Budget and Policy Priorities, *Youth Justice Reform and Reinvestment: Key Strategies and Fiscal Tools for Success*, March 2018, <http://www.youthfirstinitiative.org/wp-content/uploads/2018/03/Juvenile-Justice-Reinvestment-Toolkit.pdf>.

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