



# Health Policy Brief

Connections between criminal justice and health

## Insights on justice and race

Public and private leaders across Ohio work to build and support safe, just and healthy communities where every Ohioan can thrive. Criminal justice partners, including law enforcement, courts and corrections, play an important role in that effort. Goals of the criminal justice system include preventing crime and improving community safety. However, these worthy goals are not achieved under current criminal justice policies.

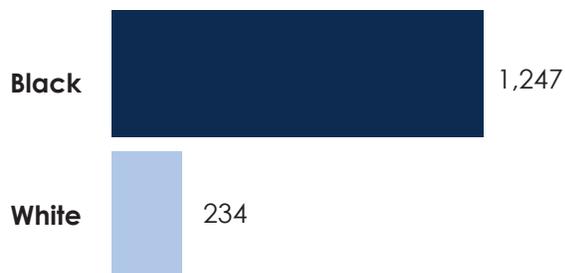
Involvement with the criminal justice system has wide-ranging, negative effects on physical and mental health for Ohioans. At the same time, justice involvement creates trauma, barriers to employment, education and housing, and may increase a person's likelihood of re-offending.<sup>1</sup> Communities of color in particular have been disproportionately impacted by our criminal justice system.

Building upon HPIO's policy brief, [Connections Between Criminal Justice and Health](#), this brief takes a closer look at the role of race within criminal justice policy. The two-way relationship between criminal justice and health is influenced by racism and other forms of discrimination, which can drive poor outcomes in both sectors (see in figure 2). Ohioans of color are often negatively impacted by unjust biases, policies and structures in the criminal justice system. This results in stark racial disparities in criminal justice outcomes, such as incarceration (see figure 1). Improvements within the criminal justice system can lead to safer, healthier and more vibrant communities in Ohio.

### 3 key findings for policymakers

- **Disparities in the criminal justice system are not inevitable**, and although unjust biases, policies and structures exist, improvement is possible.
- **Ohioans of color experience barriers to justice** stemming from a long history of racism in the criminal justice system that casts a shadow over modern policymaking.
- **Public and private stakeholders can take meaningful action** to eliminate racism in the criminal justice system and improve health, safety and well-being for every Ohioan.

Figure 1. Ohio incarcerations in state prison per 100,000 population, by race, July 2021

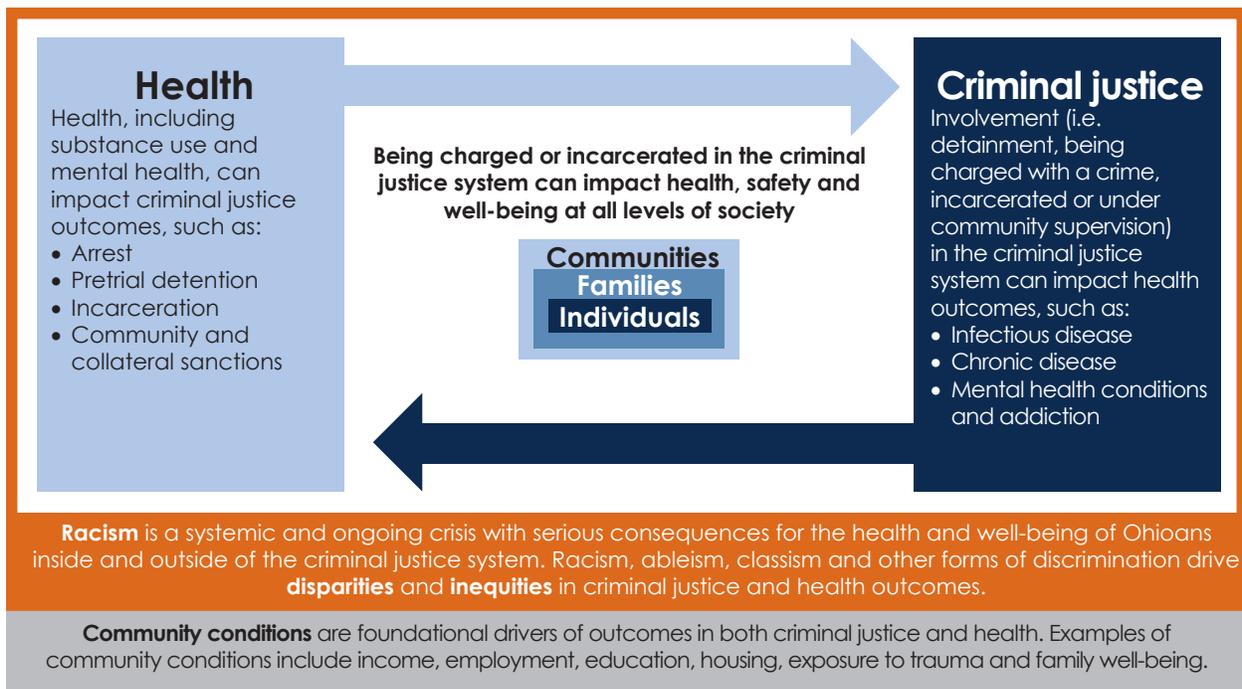


Source: HPIO analysis of Ohio Department of Rehabilitation and Corrections annual report and Population Division, U.S. Census Bureau

### This brief explores:

- The relationship between the criminal justice system and race
- Barriers to justice at the individual, institutional and structural levels that lead to poor outcomes for people of color
- Recommendations and resources for public and private stakeholders to promote safe and healthy communities across Ohio

Figure 2. **The relationship between criminal justice and health**



### How does criminal justice involvement impact health?

Criminal justice involvement can be detrimental to health. Involvement in the criminal justice system increases a person's risk of exposure to and can exacerbate existing health issues, including:

- Infectious diseases, such as HIV, hepatitis C, tuberculosis, sexually transmitted infections and COVID-19
- Chronic diseases, such as hypertension, diabetes, arthritis and asthma
- Behavioral health conditions and outcomes, such as substance use disorder, depression, anxiety, post-traumatic stress disorder (PTSD), drug overdose and suicide

In addition, a number of factors worsen existing chronic health conditions and create acute health, mental health and addiction challenges for people who are incarcerated or detained. These include poor living conditions, violence, use of disciplinary practices (e.g., solitary confinement) and access to illicit substances trafficked into prisons and jails.

For more information, see [Connections Between Criminal Justice and Health](#).

## What is the relationship between the criminal justice system and race?

Beginning with slavery, the concept of race has been a critical part of the U.S. criminal justice system. The National Law Enforcement Memorial and Museum acknowledges slave patrols, which date back to the late 1700s and early 1800s, as one of the earliest forms of policing in the American South.<sup>2</sup> Slave patrols were groups of predominantly white men who were not formal police officers but had investigative powers and seizure functions similar to modern-day arrest. Their role was used almost exclusively as a type of social control over the actions and behaviors of enslaved Black people.<sup>3</sup>

After slavery was prohibited by the 13<sup>th</sup> amendment, a system of laws and policies took its place that continued to exploit Black Americans for free labor. Many of these policies involved the criminal justice system, including:

- **Black codes:** Criminal codes meant to restrict the movement and activities of Black people, such as restricting the right of Black people to assemble or gather with others<sup>4</sup>
- **Vagrancy laws:** Laws that made it a criminal offense for Black people to be unemployed or without a permanent residence
- **Convict leasing:** The practice of leasing incarcerated people to plantations and factories as free labor<sup>5</sup>

Although the language of current laws and policies is neutral regarding race, Black people and communities of color are more heavily policed for social control and surveillance, and disproportionately incarcerated because of racial biases and longstanding practices in the criminal justice system.<sup>17</sup>

The 13<sup>th</sup> amendment itself created a path for these practices to exist by codifying a legal exception for slavery in the U.S. Constitution. The amendment prohibits slavery “except as a punishment for crime whereof the party shall have been duly convicted.”<sup>16</sup> This phrase, known as the “exception clause,” allows the criminal justice system to require incarcerated people to work as a condition of their sentence. Requiring people facing incarceration to work, often for compensation far below minimum wage<sup>7</sup>, means that still today, incarcerated people are exempt from our nation’s prohibition on slavery.<sup>8</sup>

This history casts a shadow over the modern criminal justice system, and people of color continue to be disparately affected.<sup>9</sup> Although the language of current laws and policies is neutral regarding race, Black people and communities of color are more heavily policed for social control and surveillance, and disproportionately incarcerated because of racial biases and longstanding practices in the criminal justice system.<sup>10</sup> While some criminal justice partners across Ohio are engaged in efforts to address these biases and practices, there is still work to be done in eliminating disparities, inequities and barriers to justice for Ohioans of color.

## What criminal justice disparities exist for people of color?

As a result of the historical and modern-day policies and practices outlined in this brief, there are large disparities, or gaps in outcomes, in the criminal justice system by race. The following are examples of the disparities experienced by people of color involved with the justice system.

### Incarceration in prisons and jails

Beginning in the 1960s, a series of “tough on crime” policies expanded the reach of the criminal justice system nationally and in Ohio, resulting in the incarceration of tens of thousands of Ohioans. Those who are incarcerated are disproportionately Black. High rates of incarceration have not been found to significantly improve community safety<sup>11</sup>, and instead, mass incarceration has contributed to the poor health and well-being of incarcerated people, their families and communities.<sup>12</sup>

**Disparity examples**

Black Ohioans are **incarcerated** in state prisons at a rate **five times** that of white Ohioans.<sup>13</sup>

**5x**

### Community corrections

Community corrections—programs that enforce legal sanctions on people convicted of crimes in a community or residential setting (outside of jail or prison)—are typically administered by probation or parole agencies.<sup>14</sup> In general, parolees of color are significantly more likely than white parolees to be under supervision pending a hearing.<sup>15</sup>

Black Americans comprise only 13% of the population, but make up **30% of those on probation or parole.**<sup>16</sup>

**30%**

## What barriers to justice exist for people of color in the criminal justice system?

Racist beliefs, policies and structures have created inequities (i.e., barriers to justice) for people of color, including disproportionate drug arrest rates by race and costs of bail for Black Ohioans (see below). These barriers to justice drive the disparities in incarceration and community corrections experienced by people of color. Not only are people of color disproportionately impacted, but these barriers also make the criminal justice system and communities across the state less healthy and less safe.

This section outlines barriers to justice that exist at each level of criminal justice decision-making, based on the Action Steps to Eliminate Racism and Advance Equity framework from HPIO's brief, **Connections Between Racism and Health: Taking Action to Eliminate Racism and Advance Equity**:

- Individual bias and perceptions of behavior
- Institutional policies and procedures
- Structures and systems



### Individual bias and perceptions of behavior

Racial bias and perception of criminal behavior influence all aspects of the criminal justice system, from arrest and pretrial detention to incarceration. Biases that create barriers to justice include:

**Implicit racial bias.** Implicit biases are attitudes or stereotypes that can unconsciously influence understanding, action and decisions.<sup>18</sup> Data and evidence demonstrate that communities of color experience implicit biases and discrimination based on race and ethnicity within the criminal justice system, especially in policing, probation and prosecutorial and judicial decisions.<sup>19</sup> For example, implicit bias leads to inequities in traffic stops by race, including police searching people of color at a much higher rate than white people without evidentiary reason to do so.<sup>20</sup>

**Racial profiling.** Racial profiling is a form of discrimination by which law enforcement uses a person's race or ethnicity as a key reason to engage in various forms of enforcement.<sup>21</sup> It has been proven ineffective in preventing crime and is detrimental to relationships between officers and communities.<sup>22</sup> Research finds that individual perceptions of crime and criminal activity in the U.S., such as believing that people of color are more likely to commit crime than white people, leads to people of color facing a higher likelihood of being arrested and/or being charged with violent crimes.<sup>23</sup>

**Criminal charges and plea bargains.** Given that prosecutors have discretionary authority over criminal charges and plea bargains, individual decisions that determine criminal outcomes can be influenced by implicit bias and inaccurate perceptions of behavior. Data show that Black people are more likely to be charged with one or more crimes after arrest than white people<sup>24</sup>, and that defendants of color are less likely to receive reduced charges than white defendants.<sup>25</sup>

### Inequity examples

People of color, mainly Black and/or Hispanic people, are **twice as likely to be stopped for routine traffic violations** and subsequently searched by police than white people.<sup>26</sup>

2x



### Institutional policies and procedures

The criminal justice system has many policies and procedures that lead to more severe criminal justice outcomes for communities of color. Some policies are rooted in historical racial discrimination, while others have unintended, adverse consequences when used in practice. Examples include:

**Risk assessment.** Because people of color are more likely to be arrested than white people for a variety of reasons (including implicit racial bias and racial profiling)<sup>27</sup>, some draw the unsubstantiated conclusion that people of color engage in more criminal activity. This means that risk assessment tools used in criminal justice decision-making are based on potentially inaccurate information.<sup>28</sup> This leads to additional disparities in criminal justice outcomes, including fewer pretrial detention options and longer sentences for people of color.<sup>29</sup>

**The money bail system.** Defendants of color are more likely than white defendants to be detained and placed in the custody of law enforcement before facing trial.<sup>30</sup> In addition, implicit racial bias and bias in criminal justice data (such as data used in risk assessment tools) mean that bail amounts for defendants of color are higher than bail amounts for white defendants, leaving many Black and Brown defendants to remain incarcerated until they face trial.<sup>31</sup>

**Access to specialized dockets.** Generally, only people convicted of nonviolent crimes may participate in drug courts<sup>32</sup>, leading to Black people having less access to diversion programs. Black people are more often convicted of violent crimes<sup>33</sup>, likely due to implicit bias and racial profiling. This perpetuates disparities in criminal justice outcomes for communities of color, such as Black Ohioans making up 45% of the state prison population while only 17% of treatment court participants are Black.<sup>34</sup>



## Structures and systems

Structures and systems are pervasive drivers of unjust outcomes experienced by communities of color.<sup>35</sup> For example:

**Drug control and the War on Drugs.** Efforts to reduce the possession, use and sale of illegal drugs since the 1970s — known as the War on Drugs — have focused on urban areas, low-income communities and communities of color.<sup>36</sup> For example, the Anti-Drug Abuse Act of 1986 made the penalty for possession of crack cocaine (the primary drug used in communities of color and low-income communities at the time) 100 times higher than that for possession of powder cocaine, typically used by more affluent, white people, despite similarities in potency and addictiveness.<sup>37</sup> While this penalty was changed in 2010, the sentencing disparity remains 18 times higher for possession of crack cocaine as opposed to powder cocaine, and people of color continue to experience harsher sentences for related offenses than white people.<sup>38</sup>

**Prosecutorial and judicial discretion.** By design, the American legal system gives certain professionals—including police officers, prosecutors, judges and parole officers—discretion in criminal justice decision-making. Although this discretion integrates the professional experience and expertise of decision-makers, it is also a mechanism by which individual and institutional bias can permeate aspects of the criminal justice system.<sup>39</sup>

**Data infrastructure.** There are significant gaps in data collection, analysis and evaluation across the criminal justice system.<sup>40</sup> Information on inequities in the system is limited because data on race, ethnicity, income, education and disability status are frequently unavailable. Local law enforcement agencies and jails currently have inadequate incentives, requirements and/or data management infrastructure to collect and report relevant data to the state.

### Inequity examples

On average, the **cost of bail for Black defendants is \$7,281 higher** than for white defendants.<sup>41</sup>

**\$7,281**

The **drug arrest crime rate for Black Ohioans was 2.4 times higher** than that for white Ohioans in 2020.<sup>42</sup>

**2.4x**

# Taking action

## Recommendations and additional resources

Despite these barriers to justice, policymakers and other public and private stakeholders can eliminate racism in the criminal justice system and improve the health and well-being of every Ohioan by taking meaningful actions, such as:



### Acknowledging individual bias and perceptions of behavior

- **Personally acknowledge that racism is a problem** in the criminal justice system
- **Expand your knowledge of the impacts of racism** (e.g., books, films, podcasts, discussion groups, and justice or equity training)
- **Advocate and/or be an ally for justice-involved people of color** (e.g., share data and information, demonstrate, lobby and donate to legal and/or bail funds)



### Improving institutional policies and procedures

- **Recruit, support, promote and retain diverse leadership and staff** across all entities within the criminal justice system
- **Require implicit bias assessment and other training** on historical injustices and trauma for all individuals working within the criminal justice system, including law enforcement officers, prosecutors, judges and corrections staff
- **Ensure that justice-involved Ohioans have access to evidence-informed, culturally appropriate addiction treatment and recovery services**, including all forms of Medication-Assisted Treatment for substance use disorder
- **Improve risk assessment tools** by testing them for fairness and accuracy, using them intentionally to support disparity-reduction goals and measuring performance, decisions and outcomes
- **Standardize the collection and reporting of disaggregated data**, particularly in law enforcement agencies and jails, including race, ethnicity, income, education and disability status, and evaluate disparities in outcomes



### Reforming structures and systems

- **Advocate for or support equitable outcomes in policy agendas**, including reforms to drug control policies and the money bail system
- **Promote the use of guidance documents and standardized processes for decision-makers** across the criminal justice system, including police officers, prosecutors, judges and parole officers, to eliminate racial bias and untrue perceptions of behavior
- **Require and provide funding for criminal justice partners to collect and report data**, including data disaggregated by race, ethnicity, income, education and disability status
- **Allocate funding and resources** for addiction prevention, safe and affordable housing, job training, community-based violence prevention and criminal justice diversion programs to ensure communities of color have equitable access to services and supports
- **Assess proposed criminal justice policies and analyze current laws** to identify racially disparate impacts

For more specific resources to be used at the individual, institutional and structural levels, see [HPIO's Equity resource page](#)

## Notes

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# Acknowledgements

## Authors

Stephen Listisen, MPA  
Hailey Akah, JD, MA

## Contributors

Amy Rohling McGee, MSW  
Carrie Almasi, MPA  
Reem Aly, JD, MHA  
Amy Bush Stevens, MSW, MPH  
Alana Clark Kirk, BA  
Jacob Santiago, MSW  
Leticia Nketiah, HPIO intern

## Graphic design and layout

Nick Wiseloge, MA

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Learn more about the relationship between criminal justice and health in HPIO's brief:

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