

# A Federal Agenda to Promote Safety and Justice

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**A**ll Americans deserve to live in safe communities. The criminal justice system can achieve this while upholding fair and humane policies. After the 2020 election, the Brennan Center for Justice released an affirmative, bipartisan agenda to advance these ends.<sup>1</sup> And over the past four years, officials have pursued many of its proposals, like promoting evidence-based and accountable policing, funding community-led public safety strategies, and passing legislation to improve oversight of federal jails and prisons.

But there is more work to do. The United States still leads the world in incarceration, and its criminal justice system is expensive and inefficient: Nearly 40 percent of people confined to prison are incarcerated without any compelling public safety justification.<sup>2</sup> The more than 400,000 people who annually exit prison are often stymied by their criminal convictions from rejoining their communities and leading productive lives.<sup>3</sup> And states and localities are still figuring out how to break cycles of crime and ensure durable public safety; since the pandemic, law enforcement agencies nationwide have been solving fewer crimes.<sup>4</sup>

This agenda presents crucial, targeted measures the Trump administration and Congress should champion over the next four years to prevent crime, reduce incarceration, improve oversight, save taxpayer dollars, and promote the successful reentry of formerly incarcerated people. The recommendations include ways to improve the federal criminal justice system, where the president and Congress

can exert the most direct influence, as well as funding measures to shape policies at the local, state, tribal, and territorial levels. Some proposals require legislation, while others can be achieved through executive action. Many have been implemented on a small scale in recent years, yielding promising results that merit expansion.

During his first term, President Trump signed the groundbreaking First Step Act of 2018, which comprised a spate of criminal justice reforms. Among other things, it addressed unfair sentences and offered second chances to people in prison. Now the president and Congress can build on that legacy and make the criminal justice system work better for all.

## The Federal Criminal Justice System

Incarceration is expensive and often counterproductive. Recognizing this, states began to reduce their prison populations in recent decades. The federal government eventually followed suit with periodic reforms, culminating in the enactment of the First Step Act.<sup>5</sup> However, upticks in crime in the wake of the Covid-19 pandemic have led both states and the federal government to return to more punitive measures.<sup>6</sup> This is misguided. Effectively addressing public safety goes hand in hand with reducing unnecessary incar-

ceration, improving conditions for people behind bars, and supporting their successful reentry. Such reforms also have broad, bipartisan public support.<sup>7</sup>

The president and Congress can create a more equitable, fair, and cost-effective federal criminal justice system, which would be significant on its own. Federal prisons and jails hold approximately 208,000 people, or 12 percent of the nation's incarcerated population.<sup>8</sup> The impact would be broader, though: Federal policies and rhetoric influence how states, which are responsible for the vast majority of incarceration, approach criminal justice.<sup>9</sup>

## Excessive Sentences

The federal criminal justice system remains extraordinarily punitive. It relies overwhelmingly on prison sentences rather than more cost-effective responses that improve public safety. In 2022, more than three-quarters of convicted federal defendants received a sentence of incarceration.<sup>10</sup> Many of these convictions require unnecessarily long mandatory custodial sentences.<sup>11</sup>

Although historic, the First Step Act only partly addressed these problems. Five years' worth of data shows it has been successful; more than 44,000 people have been released, with dramatically lower recidivism than among the overall population released from federal prisons.<sup>12</sup> Efforts to expand its reach, though, have so far stalled.<sup>13</sup> In the meantime, the federal prison population has been growing again since 2020 after dipping for a few years.<sup>14</sup> The Trump administration can reverse this trend while ensuring public safety.

### >> Enact criminal justice reform legislation.

Several bills with bipartisan support would check the growth of federal incarceration. The First Step Implementation Act would expand the First Step Act's sentencing reduction provisions by, for example, making some retroactive. It would also improve reentry outcomes by sealing some juvenile criminal records and improving the accuracy of federal records generally.<sup>15</sup> The Safer Supervision Act would reform federal supervision to make requirements more individualized rather than automatic, prioritize intensive supervision for serious offenses, and provide more avenues for early termination.<sup>16</sup> This would reduce cycles of revocation and reimprisonment for technical violations. And the Equal Act would end the decades-old sentencing disparity under which crack cocaine is penalized much more heavily than powder cocaine.<sup>17</sup> It would reduce individual sentences by an average of six years, cutting unnecessary prison time by an estimated 67,800 years for people incarcerated for crack offenses, 91 percent of whom are Black.<sup>18</sup>

### >> Reinstate the principles of the 2022 Department of Justice sentencing memo.

More than 40 percent of people in federal prisons are incarcerated for drug offenses.<sup>19</sup> The administration recently revoked the Department of Justice (DOJ) guidance from 2022, which, in the spirit of the First Step Act, directed federal prosecutors to ensure that drug cases do not result in "disproportionately severe sentences for certain defendants and perceived and actual racial disparities in the criminal justice system." The 2022 memo urged equal treatment of crack and powder cocaine through charging decisions and sentencing arguments. It also directed other measures that mitigated the harshness of federal drug laws, such as narrowing the circumstances in which prosecutors should file charges that trigger mandatory minimum sentences and broadening the circumstances in which prosecutors should support downward variances from the applicable sentencing guidelines.<sup>20</sup> The attorney general should reinstate the principles from the 2022 memo to ensure fair and proportionate sentencing, reduce unnecessary incarceration for drug offenses, and focus resources on violent crime.

### >> Codify broader access to compassionate release.

Compassionate release provides early release from prison due to "extraordinary or compelling circumstances" such as old age or severe illness.<sup>21</sup> Historically, compassionate release from federal prison was procedurally difficult to request and rarely granted.<sup>22</sup> Legal and procedural changes brought about by the First Step Act and the Covid-19 pandemic expanded the availability of compassionate release without harming public safety.<sup>23</sup> This suggests that more people who are incarcerated in the federal system can be safely released. In 2023, the U.S. Sentencing Commission provided guidance expanding the bases on which judges could grant compassionate release, including "unusually lengthy sentences" if certain other criteria apply.<sup>24</sup> The administration should support legislation to codify this guidance.

### >> Support more avenues for review of excessive sentences.

The opportunities for sentence reduction provided by the First Step Act are available only to a small percentage of people in federal prisons. There should be additional mechanisms for reconsidering long sentences. Six states have enacted prosecutor-initiated sentencing review, through which prosecutors identify people who can be safely released and petition courts for resentencing, and six more states are considering it.<sup>25</sup> The administration

should push for legislation to enable federal prosecutors to seek this type of reduction. It should then ensure that the DOJ and local U.S. Attorney's Office leaders encourage sentencing reviews. The administration should also provide grants and technical assistance to states to support local prosecutors' offices in implementing such processes. Also meriting support are broader sentencing review mechanisms such as the Second Look Act, which would statutorily allow people serving long sentences to petition for sentence reductions.<sup>26</sup>

## Clemency

The Constitution grants the president unilateral power to pardon people convicted of federal crimes or to commute their sentences.<sup>27</sup> Yet presidents have rarely used it to reduce unnecessary federal incarceration. Additionally, more transparency would help to avoid the chaos and favoritism that have typically characterized the exercise of presidential clemency.<sup>28</sup>

### **>> Establish a permanent and independent clemency board.**

This new board should be independent of the DOJ, which as the entity that brought the underlying prosecution has conflicting interests in reviewing a clemency petition. The board should be tasked with making recommendations for improving the federal clemency process to advance the goals of reducing incarceration and promoting fairness without sacrificing public safety. It should also be responsible for identifying categories for clemency that meet these goals, such as individuals who were sentenced using obsolete enhancements and those who received lengthy sentences for certain types of drug offenses that are treated more leniently now.

Clear and flexible standards should guide the board's decisions. The board should provide robust written explanations for its recommendations. It should be created at the start of the administration to ensure that the clemency power is used transparently and prudently from the outset and on an ongoing basis. The board should be bipartisan and include representatives from the DOJ, law enforcement, public defense, advocacy, and academia, as well as individuals who were formerly incarcerated, to provide a comprehensive perspective on improving the clemency process.<sup>29</sup>

## Prison Conditions and Reentry

It is critical to improve incarcerated people's quality of life. Effective prison oversight can help ensure that abuse and

misconduct do not take root and flourish. More than 40,000 people leave federal prison every year and routinely face challenges in securing housing, education, employment, and health care.<sup>30</sup> The Federal Bureau of Prisons (BOP) should offer more programming that encourages rehabilitation, supports successful reentry, and reduces recidivism.<sup>31</sup> Access to these programs improves public safety for all.<sup>32</sup>

### **>> Fund oversight of federal prisons.**

In 2024, the Federal Prison Oversight Act was enacted with overwhelming bipartisan support in Congress as well as support from both incarcerated people and corrections officers. The law gives the DOJ's inspector general the authority to conduct comprehensive inspections of prisons and creates a BOP ombudsman, who can initiate an investigation based on a complaint from a corrections staff member or incarcerated person.<sup>33</sup> However, without sufficient funding for the training, staffing, and investigative resources required for oversight of the BOP's 122 correctional facilities, the legislation will not provide the transparency and accountability it promises. The administration should fully fund the law in its first budget. It should also work with Congress to ensure full long-term funding to sustain effective oversight.

### **>> Expand opportunities for second chances.**

About one in three adults has a criminal record, which can be an obstacle to obtaining employment, housing, and education.<sup>34</sup> Removing this barrier can help millions of Americans reintegrate successfully into economic and family life. Business leaders as well as criminal justice reform advocates embrace policies that do so. The administration should prioritize passage of the Clean Slate Act, which would automatically seal the federal records of people convicted of low-level, nonviolent drug offenses after they have completed their sentences.<sup>35</sup> The bipartisan bill is based on clean slate laws that have been enacted in at least 12 states since 2018.<sup>36</sup> The administration should also champion the Fresh Start Act, which would help to fund state-level clean slate efforts.<sup>37</sup>

### **>> Facilitate access to identification documents.**

Many people leave prison without identification documents, which are necessary to secure housing and employment. The BOP is required by law to help incarcerated individuals apply for documents such as Social Security cards, birth certificates, and state-issued photo IDs before their release. But there are inherent challenges to providing these services, such as the fees for obtaining birth certificates and the need to get state-issued photo IDs in person.<sup>38</sup>

The administration should work with Congress to make it easier to provide identification documents. It should support the Bureau of Prisons Release Card Act of 2024, which would require the BOP to issue federally approved identification documents to all U.S. citizens as they leave BOP facilities.<sup>39</sup> It should also use current grant funding programs to incentivize more states to provide necessary identification documents to people as they leave jail or prison.<sup>40</sup>

## Federal Funding for States and Localities

Most U.S. criminal justice policy is set by the states, which hold 87 percent of the nation's imprisoned population.<sup>41</sup> Nonetheless, since the 1960s, Washington has played an outsized role in influencing practices and policies across the country through grants to states and localities. During President Trump's previous term in office, as one example, the DOJ, under the First Step Act, awarded seven states more than \$42 million for developing the skills of people exiting prison. Through this program, community organizations and correctional institutions train people specifically for jobs available in their communities.<sup>42</sup> As another example, the Department of Labor granted states around \$2.2 million to expand the use of fidelity bonds, which underwrite companies that hire formerly incarcerated people.<sup>43</sup> The Trump administration and Congress should harness the federal government's grant-making power to spur local and state governments across the country to pursue policies that advance both safety and justice.

### >> Help states solve more violent crime.

Violent crime is declining across the nation.<sup>44</sup> But, according to the latest FBI data, about 58 percent of all reported homicides and violent crimes in 2023 went unsolved.<sup>45</sup> The Victim Act would establish a \$360 million grant program within the DOJ to give state, tribal, and local law enforcement agencies resources to improve clearance rates for homicides and gun-related crimes.<sup>46</sup> Jurisdictions could use the funding to hire, train, and retain detectives and evidence-processing personnel; purchase equipment; develop evidence-based practices; and ensure that victims and family members receive mental health treatment, counseling, and other support.

### >> Fund community-based violence intervention programs.

Violence intervention programs tailor evidence-informed initiatives to the most severely affected areas. These

efforts take various forms. For example, Safe Streets Baltimore relies on trained, respected community members to work with people at risk for involvement in gun violence. During its first four years, the program was associated with a 32 percent reduction in homicides across five neighborhoods where the program had been implemented the longest.<sup>47</sup> More federal funding can expand these life-saving programs.<sup>48</sup>

### >> Continue funding and technical assistance for co-responder and alternative response programs.

Dozens of jurisdictions across the country have adopted co-responder models, in which teams of law enforcement and health professionals jointly respond to behavioral health crises.<sup>49</sup> Jurisdictions have also invested in alternative response models, deploying health professionals on their own. These programs lessen the burden on law enforcement as first responders and better address mental illness and substance use by connecting vulnerable populations to appropriate services.

Data on these initiatives is limited but promising.<sup>50</sup> For instance, a 2022 study on Denver's Support Team Assistance Response (STAR) program, which dispatches a behavioral health-care worker along with a paramedic or emergency medical technician to individuals in crisis, found a 34 percent drop in low-level crime in neighborhoods it served.<sup>51</sup> And a survey of more than 600 Durham, North Carolina, residents found that 57 percent were more likely to call 911 because of the city's crisis response team.<sup>52</sup>

Several funding programs have backed these efforts, including the 2021 American Rescue Plan (ARP).<sup>53</sup> Detroit, for example, used more than \$100 million in ARP funding to, among other things, support law enforcement, fund community violence intervention strategies, and expand teams of police and mental health professionals that respond to people in crisis.<sup>54</sup> In 2023 the city reported an 18 percent decline in homicides from the year prior — its fewest since 1966.<sup>55</sup>

### >> Fund substance use research, outreach, and treatment.

In June 2024, the United States saw a 14.5 percent decrease in drug overdose deaths from the preceding year, the first such decline since 2018.<sup>56</sup> The administration should prioritize research into the causes of the decline, which can highlight effective treatment and enforcement measures. It should also continue to support partnerships between federal agencies, such as the Drug Enforcement Administration, and community-based organizations to promote local public education and treatment efforts.<sup>57</sup>

## **>> Ensure continuity of medical coverage.**

Upon incarceration, people lose many federal health benefits under programs including Medicaid and Medicare.<sup>58</sup> As a result, those leaving jails and prisons — who face high rates of untreated behavioral health problems, emergency room visits, and overdoses — often lack insurance.<sup>59</sup> The administration and Congress can work together to expand coverage, thus improving health care and also aiding successful reentry.

In early 2023, the Centers for Medicare and Medicaid Services (CMS) began allowing states to waive bars on Medicaid coverage during incarceration.<sup>60</sup> Such waivers enable coverage of some care services up to 90 days prior to release from jail or prison. As of early December 2024, CMS had approved 11 states' Medicaid reentry waiver applications, and 13 more are pending.<sup>61</sup> The administration and Congress should provide planning grants to encourage more states to seek these waivers. It should also provide states with sufficient funds and technical assistance to offer prerelease services enabled by these waivers.

The Due Process Continuity of Care Act would allow Medicaid coverage for health services for individuals detained pretrial, and the Reentry Act would allow Medicaid coverage 30 days prior to release from incarceration. These bills, which were both cosponsored in the Senate by Vice President JD Vance and have bipartisan support, would help to bridge the reentry coverage gap nationally.<sup>62</sup> The administration should work with Congress to enact them promptly.

## **>> Incentivize states to fight gun violence.**

Federal funding can be used to encourage more states to establish offices of gun violence prevention. In 2023, the Biden administration established the first White House Office of Gun Violence Prevention.<sup>63</sup> The office helped coordinate the federal government's response to mass shootings and gun violence, empowered state and local governments to do the same, and developed and implemented law and policy to address gun violence. Eleven states have now established their own offices of gun violence prevention.<sup>64</sup> Each takes a unique approach.<sup>65</sup> The administration should retain the White House office and support state offices.

Funding can also be used to encourage states to adopt red-flag laws and expanded background checks, as the Bipartisan Safer Communities Act provides.<sup>66</sup> More than 70 percent of Americans support red-flag laws, which help keep firearms away from people who may use them to harm themselves or others.<sup>67</sup> Twenty states and the District of Columbia have red-flag laws, under which law enforcement can petition a judge for a protection order.<sup>68</sup> Some of these states likewise authorize family members, teachers,

and medical professionals to petition a judge for such an order.<sup>69</sup> Twenty-two states have enacted laws that require background checks for all or most private sales of guns.<sup>70</sup>

Federal officials should also allocate funds to study the drivers of gun violence. In 2019, for the first time in decades, Congress began allocating money to various federal agencies to research gun injury prevention.<sup>71</sup> But more funding is needed. Insight into the roots of gun violence can help governments at all levels prevent injuries and save lives.

## **>> Enact the Smart Sentencing Adjustments Act.**

For a half-century, federal grants spurred states to incarcerate more people and impose longer sentences, even though mass incarceration — which costs tens of millions of dollars annually — failed to produce greater public safety.<sup>72</sup> Congress and the administration should prioritize passage of the Smart Sentencing Adjustments Act, which would channel money to states to reduce unnecessary incarceration while promoting humane and fair criminal justice policies that preserve public safety.<sup>73</sup> The proposal was crafted in consultation with a variety of stakeholders, including law enforcement and formerly incarcerated people.

The legislation would reward states that shrink their prison populations by 20 percent over three years with an extra three years of funding; prohibit states from enacting punitive sentencing laws such as mandatory-minimum rules or truth-in-sentencing statutes while receiving funding; and establish subgrants for organizations that are led by formerly incarcerated individuals or that serve high numbers of people who have been arrested or convicted. The impact of these policies would be historic: If the 25 states with the largest prison populations used these funds to reduce imprisonment by 20 percent, 179,000 fewer people would be confined.<sup>74</sup>

# **Conclusion**

The next chapter in criminal justice reform need not be mired in partisan gridlock. On the contrary, elected leaders at all levels of government should coalesce around shared values — like fairness, second chances, and fiscal efficiency — to reduce crime and promote justice. The administration and Congress can make many common-sense changes to improve the federal criminal justice system, which can also serve as a model for the states. They can also offer federal financial support to the states that are best positioned to impact the most people. Americans want safer communities, and they also want a more fair, efficient, and effective criminal justice system. This agenda offers tested proposals, many with bipartisan support, to achieve those aims.



# Endnotes

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