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# Beyond the U.S. Department of Justice

An Intersectional Approach To Advancing  
Criminal Justice Reform at the Federal Level

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# Introduction and summary

In his first address to a joint session of Congress, President Joe Biden enumerated his vision for advancing equity across American society by delivering “good jobs, good schools, [and] affordable housing.”<sup>1</sup> These cross-cutting goals for promoting racial equity are inextricably linked to the issues of public safety and criminal justice reform, as the resources outlined by the president, along with other social supports, are the backbone of safe communities. However, decades of government disinvestment have made these vital resources inaccessible to many communities—predominantly communities of color—undermining neighborhood safety and well-being. At the same time, the rise of “tough on crime” policies criminalized poverty and unjustly targeted Black and Latinx residents for arrests and imprisonment. These policies have uprooted millions of low-income people and people of color—including a disproportionate number of Black women and youth and, especially, Black men—from their lives, siphoning them away into prisons for years or, often, decades.

In recent years, policymakers have acknowledged the failures of the tough-on-crime era and have even taken steps to reform unduly harsh policies.<sup>2</sup> Yet tough-on-crime practices continue to negatively affect communities today, with many generations of families dealing with the collateral consequences of the overly punitive criminal legal system. Such consequences—which include housing insecurity and restricted economic mobility—continue to trap entire families and communities in a cycle of disadvantage and justice system involvement. In doing so, they make it much more difficult for formerly incarcerated individuals to successfully return to their communities.<sup>3</sup>

The nation urgently needs to rethink justice system operations, from policing and prosecution to probation and parole. But a comprehensive approach to U.S. criminal justice reform must also look beyond the justice system. The nation must re-examine the web of policies that intersect with public safety and criminal justice—from education to economic development to health care and beyond. Only through an intersectional approach can the government truly redress the harms of the past and build a fairer, more just, and equitable future.

## Early Biden administration efforts to reform the criminal justice system

Already, the Biden administration has made good use of executive authority to roll back harmful criminal justice policies implemented by former President Donald Trump within the Department of Justice (DOJ). President Biden has ordered the DOJ to phase out the use of private prisons, reversing course from the stance taken by former Attorney General Jeff Sessions, who rescinded an Obama-era directive to end federal use of private prisons.<sup>4</sup> Biden's DOJ has also instructed federal prosecutors to make charging and sentencing decisions based on the individual circumstances of each case, rather than default to the most serious and severe punishments possible.<sup>5</sup> Moreover, in April 2021, Attorney General Merrick Garland launched "pattern-or-practice" investigations—probes to review if law enforcement routinely engages in unconstitutional or unlawful policing practices—into the Minneapolis Police Department and the Louisville Metro Police Department; these are the first new investigations since the Trump administration put a moratorium on launching new probes in 2018.<sup>6</sup>

While the DOJ will undoubtedly play a significant role in reforming criminal justice policy and regulations during the next four years, other federal agencies will also be crucial to these efforts. From the Department of Agriculture to the Department of Veterans Affairs, every corner of President Biden's administration will be essential in shaping the future of America's approach to safety and justice. As the new administration works toward its promise to "strengthen America's commitment to justice,"<sup>7</sup> there are several agencies that can take meaningful action toward implementing progressive criminal justice reforms, reducing the footprint of the justice system, and removing barriers for formerly incarcerated individuals.

This report highlights some of the agencies beyond the DOJ that can have significant impacts on reforming the criminal justice system and outlines measures that they could take to establish policies and regulatory practices that would support a more fair and equitable justice system in the long term.

# Department of Agriculture

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## Ensure justice-involved people have access to food

The U.S. Department of Agriculture (USDA) oversees federal policy concerning food, agriculture, natural resources, rural development, nutrition, and other related issues.<sup>8</sup> Among the USDA's primary objectives is increasing access to food by combating food insecurity, which it works toward through programs such as the Supplemental Nutrition Assistance Program (SNAP).<sup>9</sup>

While an individual's criminal history should have no bearing on their ability to access federal food assistance programs, legislation enacted in 1996—the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA)—instituted a ban barring people with felony drug convictions from accessing SNAP benefits.<sup>10</sup> Regardless of the original intent of this legislation, excluding people with criminal records from social safety net programs exacerbates the hardships associated with justice system involvement. People with criminal records face structural barriers to high-quality employment, and without a regular paycheck, it is hard to put food on the table.<sup>11</sup>

By alleviating food insecurity, SNAP can help formerly incarcerated people build healthy and stable lives. In fact, research has shown that having access to public assistance reduces the likelihood of recidivism for people with criminal records.<sup>12</sup> In addition, ensuring that all justice-involved people have access to social safety net programs such as food assistance would help support the health and development of the approximately 33 million to 36.5 million U.S. children whose parents have a criminal record.<sup>13</sup> Expanding safety net programs—such as SNAP—to be inclusive of people with criminal records would therefore mitigate obstacles and pave the way for a second chance.<sup>14</sup>

Congress would have to pass legislation to overturn the nationwide ban on SNAP benefits for people with felony drug convictions. Promisingly, the American Families Plan, introduced by the Biden administration in April 2021, would do just that.<sup>15</sup> Yet even in the absence of legislative action, the USDA currently has tools available to mitigate the harm caused by PRWORA. The 1996 law contains a provision allowing states to pass their own legislation modifying or eliminating the ban, which most states have

taken advantage of in recent years.<sup>16</sup> Indeed, 25 states and Washington, D.C., have fully opted out of the ban, and 24 states have modified the ban for people with felony drug convictions; only South Carolina has kept a lifetime ban in place.<sup>17</sup> The USDA must continue working with states to further expand access to food assistance and minimize the harms caused by the federal ban.

In addition, because ensuring food access is critical for reentry success, the USDA should encourage state governors to take advantage of federal waivers that allow incarcerated people with upcoming release dates to pre-enroll in SNAP, ensuring they have immediate access to nutritional benefits upon release. For example, the USDA recently approved a pilot program in Orange County, California, that will allow incarcerated people to apply for CalFresh, the state's food assistance program, up to 30 days before their release.<sup>18</sup> This strategy expands people's access to food when they are working to find housing, secure employment, and more, thus allowing them to avoid food insecurity during a period of uncertainty and vulnerability.

By urging states to apply for these waivers and expediting their approval, the USDA can help expand access to opportunity for justice-involved Americans—without having to wait for Congress to take action.

# Department of Education

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Break down the school-to-prison pipeline and ensure access to educational opportunities

While there are many aspects of the Department of Education's (ED) mission and work that have implications for criminal justice reform efforts, there are two substantial areas that deserve significant attention by new leadership at the department: 1) breaking down the school-to-prison pipeline; and 2) ensuring robust access to educational opportunities for justice-involved individuals.

The school-to-prison pipeline refers to the systematic funneling of students—predominantly students of color and those who are disabled or low-income—into the juvenile correctional system.<sup>19</sup> This phenomenon is driven by punitive school disciplinary practices rooted in systemic racism, such as zero-tolerance policies and an overreliance on suspensions and expulsions.<sup>20</sup> Educators are significantly more likely to levy these punishments against students with marginalized identities, based on biased perceptions of students' behavior within the classroom.<sup>21</sup> For example, research has found that educators often perceive disability in white students as a medical condition mandating care and treatment, while disability in students of color is often met with punishment, which leads to a disproportionate percentage of these students winding up in the justice system.<sup>22</sup>

In an effort to interrupt the school-to-prison pipeline, the Obama administration's ED issued a number of policy documents and regulatory changes aimed at minimizing reliance on exclusionary discipline practices and providing a safe learning environment for K-12 students of all ages.<sup>23</sup> The Trump administration, however, reversed the federal government's approach to school discipline. Notably, in 2018, then-Secretary of Education Betsy DeVos repealed school discipline guidance aimed at reducing racial disparities in school disciplinary practices.<sup>24</sup>

Fortunately, the Biden administration has already signaled its intent to reverse Trump-era policies by restoring guidelines to reduce racial and other disparities in school discipline.<sup>25</sup> Moving forward, ED should continue to reinstate and expand on this critical guidance as well as commit to its enforcement in schools nationwide.

The Education Department also has a role to play in ensuring access to educational programs outside of the K-12 setting by addressing barriers faced by justice-involved populations. Importantly, it can support education programs for incarcerated adults and young people.<sup>26</sup> In the past, ED has offered a handful of one-off grants to support educational programming in state and local correctional facilities. Yet given the understanding that correctional education can significantly improve reentry outcomes, the department should expand its federal grant programs dedicated to “behind bars” education.<sup>27</sup> And through the voluntary State Correctional Education Self-Assessment, created by ED’s Office of Special Education Programs, states can ensure that education programming for incarcerated students with disabilities is accessible and in line with recommendations established by the Individuals with Disabilities Education Act (IDEA).<sup>28</sup>

The Education Department also has latitude to dismantle barriers to postsecondary education. In 2016, it published “Beyond the Box,” a resource guide to help colleges and universities expand access to postsecondary learning opportunities for justice-involved students by looking beyond arrest and conviction records during the admissions process.<sup>29</sup> ED can, however, build on this guidance by pushing for postsecondary institutions to not only look beyond the box—which refers to the box applicants must check if they have a criminal record—but also ban questions about criminal history from admissions forms altogether.<sup>30</sup>

In addition, ED will play an integral role in providing high-quality postsecondary education behind bars through federal Pell Grants for incarcerated individuals. In December 2020, Congress restored Pell Grant eligibility to incarcerated individuals.<sup>31</sup> Now it is up to ED to equip correctional facilities with rigorous college programming that meets the needs of incarcerated students.<sup>32</sup>



# Department of Health and Human Services

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## Ensure formerly incarcerated people have access to health coverage

Those who have experienced incarceration report high rates of mental illness, substance use disorder, and other physical health problems.<sup>33</sup> Because the first few weeks post-incarceration often define the reentry trajectory for returning individuals, it is critical to ensure that people have immediate access to health care—especially substance use disorder treatment, mental health services, and behavioral health services—upon release. Providing health insurance coverage can mitigate the risk of recidivism and substantially improve health outcomes during this time period.<sup>34</sup> Unfortunately, about 80 percent of formerly incarcerated people become uninsured upon release, putting a sudden stop to the medical treatments they may have been receiving while incarcerated, thus increasing their odds of hospitalization and even death in the weeks following release.<sup>35</sup>

The Centers for Medicare and Medicaid Services (CMS) within the Department of Health and Human Services (HHS) administers Medicaid, the joint federal-state program that provides health care coverage to nearly 80 million low-income people, including those who have experienced incarceration and meet other eligibility criteria.<sup>36</sup> State Medicaid programs have a vital role to play in ensuring continuity of care for justice-involved populations by facilitating access to Medicaid during this critical period in the reentry process. While incarcerated individuals are not eligible for Medicaid benefits, CMS has previously taken steps to help states ensure that individuals have Medicaid coverage as soon as they are released into the community. In 2016, for example, CMS issued guidance outlining how states and localities can ensure that incarcerated people are enrolled in Medicaid prior to their release.<sup>37</sup> One key strategy identified by CMS was for states to temporarily suspend, rather than terminate, an enrollee's existing Medicaid coverage during incarceration and promptly reactivate it upon their release.

Recently, a bipartisan congressional coalition introduced the Medicaid Reentry Act, which would grant states the power to restart Medicaid services for incarcerated individuals 30 days before their release.<sup>38</sup> These efforts, however, must be paired

with a broader push for states to expand Medicaid: 12 states still have yet to expand Medicaid under the Affordable Care Act. Notably, these states are primarily in the South, where those who would most likely benefit from Medicaid expansion are disproportionately Black and Hispanic.<sup>39</sup>

Moving forward, CMS should review best practices to ensure continuity of care following release and then offer additional guidance to states working to expand supports for residents returning from incarceration, including specific waiver and state plan amendment templates.<sup>40</sup> A number of states already provide targeted services for justice-involved individuals, such as case management or health homes. Other states should follow suit. Moreover, CMS should continue to encourage states to use Medicaid's flexibilities, including waivers and state plan amendments, for formerly incarcerated residents during the critical post-release period.

In addition, CMS can encourage states to cover services that proactively support individuals' health care needs that could potentially lead to justice involvement if left unaddressed. One such approach is assertive community treatment, a model that provides intensive community-based support to people with serious mental health disorders, helping alleviate their symptoms and prevent mental health crises from occurring in the first place.<sup>41</sup> Yet when such crises do occur, it is important to ensure people are met with a response appropriate to their needs. Promisingly, the Biden administration has already signaled its support for community responder teams, which dispatch trained civilians in lieu of police for 911 calls related to behavioral health needs.<sup>42</sup> Research suggests that these community responders—also known as “mobile crisis intervention teams”—can resolve calls for service without relying on the police and, when necessary, connect people with supportive services to meet their needs and keep them out of jail.<sup>43</sup> The new administration is encouraging adoption of this model nationwide: The American Rescue Plan (ARP) encourages states to cover mobile crisis intervention services by providing an 85 percent enhanced federal matching rate for these services, in addition to providing funding for states to plan and develop crisis intervention teams.<sup>44</sup>

This is one great example of how federal policymakers can employ Medicaid in ways that allow states to shrink the footprint of the criminal justice system.

# Department of Housing and Urban Development

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## Increase access to housing for those with criminal records

The Department of Housing and Urban Development (HUD) is well-positioned to address one of the key challenges facing justice-involved individuals: housing insecurity. A report from the Prison Policy Initiative found that “formerly incarcerated people are almost 10 times more likely” than the general public to experience homelessness.<sup>45</sup> Moreover, people experiencing homelessness are too often jailed for activities such as loitering or sleeping in public, leading to their overrepresentation within the incarcerated population.<sup>46</sup> Thus, as one study concluded, “Homelessness can be both a cause and consequence of having a criminal record.”<sup>47</sup>

With a stated mission “to create strong, sustainable, inclusive communities and quality affordable homes for all,” HUD can provide guidance and advance solutions concerning the unique relationship between housing access and justice involvement.<sup>48</sup> During the Obama administration, for example, HUD encouraged public housing authorities (PHAs) and owners of other HUD-assisted properties to consider applicants with criminal records, who are often outright denied housing based on restrictive screening policies. The administration’s guidance was rooted in the understanding that having a secure place to live is among the “most fundamental building blocks of a stable life” and can minimize the circumstances, such as homelessness, that contribute to recidivism.<sup>49</sup>

In 2015, HUD followed up with guidance that clarified that an arrest itself does not prove that a person has engaged in criminal activity, and thus, arrest records alone should not be used to exclude an applicant from housing.<sup>50</sup> A year later, HUD took its guidance a step further and warned housing providers that the practice of outright denying all applicants with any type of criminal record has a racially disparate impact because people of color are disproportionately targeted for arrest and incarceration. Indeed, Black and Hispanic housing applicants bear the burden of “blanket ban” admission policies, thus making the practice discriminatory and in violation of the Fair Housing Act—a federal law that protects against housing discrimination.<sup>51</sup>

During the Trump administration, however, then-HUD Secretary Ben Carson reversed course, advancing policies that undermined the original intent of the Fair Housing Act, including suspending the Affirmatively Furthering Fair Housing (AFFH) rule, which requires federal grantees to work actively to eliminate housing discrimination and segregation.<sup>52</sup> Secretary Carson also gutted the Disparate Impact rule, which protects against policies and practices that are formally race-neutral but have an adverse effect on communities of color.<sup>53</sup>

Fortunately, the Biden administration has indicated its plan to reverse these practices and build on the inclusive housing framework established during the Obama administration.<sup>54</sup> HUD can reinvigorate enforcement of the Fair Housing Act while simultaneously providing guidance to housing providers on how to appropriately consider criminal records in housing decisions and increase access to housing for people with criminal records.

# Department of Labor

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## Connect justice-involved job seekers to high-quality jobs

In 2008, the unemployment rate for formerly incarcerated people was 27.3 percent—significantly higher than the unemployment rate for the general public, 5.8 percent.<sup>55</sup> Despite the fact that the vast majority of formerly incarcerated people are actively seeking work, finding employment proves to be challenging, with research highlighting the barriers presented by having a criminal record.<sup>56</sup> Similar to housing insecurity, job insecurity can be a cause and consequence of justice involvement. Therefore, criminal justice reform efforts must acknowledge the relationship between opportunities for high-wage, high-quality employment and the criminal justice system.

The Department of Labor (DOL) has a number of tools available to connect justice-involved job seekers with stable, high-quality employment. For example, in July 2021, the Biden administration convened a session concerning the recent rise in gun-related crimes, indicating that the White House plans to take a comprehensive approach to it. This includes providing additional funding for DOL grant programs aimed at promoting access to employment and job security for justice-involved individuals. The Reentry Employment Opportunities (REO) program, for example, provides funding for programs that improve workforce outcomes for justice-involved people by creating pathways to well paid careers in high-demand fields.<sup>57</sup> The DOL can also encourage employers to hire people with criminal records through programs such as the Work Opportunity Tax Credit and the Federal Bonding Program, both of which are designed to help people who consistently face barriers to employment, including those with criminal records.<sup>58</sup>

The DOL can also promote opportunity for justice-involved people by providing job and skills trainings in jails and prisons, helping prepare them for success in the job market upon release. For example, since 2015, the DOL has funded and tasked local agencies with testing various methods of creating jail-based American Job Centers (AJCs).<sup>59</sup> A Mathematica study found significant benefits correlated with AJCs,

including an increase in perceived job readiness and a decrease in recidivism rates.<sup>60</sup> These findings speak to the potential for jail-based job and skills training to mitigate the barriers to employment for people with criminal records and, ultimately, promote reentry success.

# Department of the Interior

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## Fund services to limit criminal justice involvement in Native populations

The Department of the Interior's (DOI) stated mission is to sustain the United States' lands, water, wildlife, and energy resources, honor the country's responsibilities to tribal nations, and advocate for its island communities.<sup>61</sup> Yet the federal government must do much more to serve the Native populations who were established in this country well before its conception. America has long failed to meet the trust obligations enshrined in the treaties through which tribes ceded their lands.<sup>62</sup> Trust and treaty law requires that the United States honor tribal sovereignty and provide adequate resources for tribes to deliver essential services to their people. This is both the foundation of the government-to-government relationship that the United States must maintain with tribes and a pathway to improved social outcomes, as tribes are better equipped than external actors to address issues in their communities in a culturally competent and effective manner.

Among the many disparities faced by the Native communities in the United States, they are overrepresented in the criminal justice system. In Minnesota, for instance, Native people comprise 7.6 percent of the state prisoners despite making up only 1 percent of its population.<sup>63</sup> And in Montana, Indigenous people comprise 20 percent of male state prisoners and 34 percent of female state prisoners despite only comprising 6.5 percent of the state's total population.<sup>64</sup> As a 2015 report by the Lakota People's Law Project found, "In total, the number of Native Americans per capita confined in state and federal prisons is approximately 38 percent above the national average."<sup>65</sup>

There is clearly a crucial need for the federal government to support tribal nations by providing funding and resources to address the drivers of Native people's criminal justice involvement, which is often rooted in the federal government's failure to address generational poverty, the lack of educational opportunities, and the lack of economic opportunities in Indian Country, among other policy shortcomings. For example, Native people report higher rates of substance use disorders than the general U.S. population, which increase the risk of future justice involvement.<sup>66</sup> The Bureau of Indian Affairs (BIA) Office of Justice Services (OJS), which is housed within the DOI,

has acknowledged the need to connect justice-involved Native people who have substance use disorders to treatment opportunities.<sup>67</sup> This eventually led to the creation of the Diversion and Re-entry Division (DRD) in 2015, which aims to reduce recidivism within this demographic by focusing on treatment and recovery.<sup>68</sup>

Going forward, the DOI should continue to pursue these priorities, including by expanding the DRD's Recidivism Reduction Initiative (RRI), which currently includes just three tribes.<sup>69</sup> The DOI must also address the chronic underfunding of tribal public safety and juvenile justice systems. By increasing funding for tribal public safety and justice programs, the DOI can both improve the federal government's duty to tribal nations and allocate long-overdue resources and funding to tribal nations, which will allow them to build culturally competent wellness courts, diversion programs, treatment programs, and other initiatives that can improve public safety and reduce rates of justice involvement.<sup>70</sup>



# Department of Veterans Affairs

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## Help veterans successfully reintegrate into their communities

Veterans face a heightened risk of mental health needs and substance use disorders after returning from deployment, when they may be coping with trauma and challenges reintegrating into civilian life.<sup>71</sup> In a nation that far too often criminalizes behavioral health disabilities, veterans struggling with mental health and/or substance use disorders are, sadly, also at an increased likelihood of becoming justice-involved. Compounding the issue, veterans also experience high rates of homelessness, another key risk factor for incarceration. In fact, more than half of justice-involved veterans have either a mental health or substance use disorder, and about 30 percent have experienced homelessness.<sup>72</sup>

The Department of Veterans Affairs (VA), which provides benefits, care, and support to those who have served in the U.S. armed forces, must continue to serve justice-involved veterans as well as those who are at risk of justice involvement by prioritizing the prevention of homelessness, the facilitation of access to quality medical treatment, and the coordination between correctional facilities and reentry systems when a veteran does become justice-involved.<sup>73</sup>

The VA has previously identified 10 strategies for ending veteran homelessness.<sup>74</sup> These strategies include proven methods to address homelessness, such as a Housing First approach, which prioritizes housing people as quickly as possible and removes common barriers to housing, including substance use disorder, poor credit, and a criminal record.<sup>75</sup> The VA has also pushed for veterans to be screened for housing status or homelessness if they are arrested. Doing so provides VA specialists and case-workers the ability to assess veterans' needs and possibly divert them from traditional courts or prisons.<sup>76</sup> Specifically, the Veterans Justice Outreach Program, when notified, can connect with justice-involved veterans and “facilitate access to VA services at the earliest possible point.”<sup>77</sup>

The VA should also make an investment in programs such as Patient-Aligned Care Teams (PACT), which provide services to address needs before a crisis occurs, thus minimizing potential interaction with law enforcement.<sup>78</sup> However, when things do escalate to a point of crisis, it is critical for the VA to scale up other early intervention models, such as Crisis Intervention Team (CIT) programs—partnerships between local law enforcement and community responders that provide a more appropriate response to individuals experiencing mental health crises. Building on this model, the VA can partner with local CIT teams to facilitate connections to services for veterans in crisis who may be at risk of homelessness.<sup>79</sup>

In addition, the VA has avenues for assisting veterans during and after incarceration. For example, it can continue to support diversion programs, such as Veterans Treatment Courts, that offer substance use treatment as an alternative to incarceration, greatly increasing these veterans' likelihood of securing stable housing and decreasing their odds of future arrest.<sup>80</sup> And for veterans who do experience incarceration, Health Care for Re-entry Veterans (HCRV) Services is an invaluable tool for improving veterans' reentry process. HCRV Services includes outreach for incarcerated veterans; referrals to medical, mental health, social services, and employment services upon release; and short-term case management assistance during the reentry process.<sup>81</sup>

By taking advantage of its ability to facilitate access to medical treatment, social supports, and employment opportunities, the VA better can better prepare veterans to return successfully to their communities.<sup>82</sup>

# Conclusion

When it comes to the future of criminal justice reform at the federal level, congressional action is necessary. But it is not the only means of bringing about change. The Biden administration must challenge agency leaders to implement policies that will help build a justice system centered in fairness and equality.

While the Department of Justice certainly plays a key role in these efforts, other agencies throughout the executive branch can also develop programmatic practices and regulatory policies that will help reverse the harms inflicted in the U.S. justice system and establish long-lasting practices on which progressive reforms can be built. America's commitment to justice is dependent on the full executive branch leading the charge to reform the criminal justice system.

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