

Criminal Legal System Policy Priority Briefs

Criminal Justice Reform

What is Criminal Justice Reform?

Criminal Justice Reform involves changing the criminal justice system to ensure that it is equitable in preventing crime, providing public safety to all communities, and assessing penalties. It also includes finding alternatives to prison for nonviolent offenders and providing more support and resources for people to reintegrate into society after they have been incarcerated. Criminal justice reform aims to create a system that promotes justice, fairness, and safety for everyone involved.

Criminal Justice Disparities in the South

According to [SPLC Action](#), Southern states have increased their prison population by 127% from 1990 to 2019. The [Southern Center for Human Rights](#) reported that Georgia has over 525,000 individuals either incarcerated, on probation, or parole, resulting in one out of every eighteen adults being under some form of correctional supervision.

South Carolina maintains an incarceration rate of [678 per 100,000 individuals](#), meaning that it incarcerates a more significant proportion of its population than any other democratic country worldwide.⁽ⁱⁱⁱ⁾ Southern states make up ten out of the top twenty states that have the highest incarceration rates in the country. Louisiana, “the incarceration capital of the world,” holds the most inmates locked up for life without parole. According to the [Prison Policy Initiative](#), “every single U.S. state incarcerates more people per capita than virtually any independent democracy on earth.”

There have been significant efforts at reform in prior years that bear mentioning for purposes of this brief. For example, in 2021, Alabama enacted the [Clean Slate Act](#) which expunges certain misdemeanor

convictions after a certain period without re-offending. In 2023, Louisiana created new juvenile education [programs](#) that will help justice-involved children develop skills and opportunities for educational development. In that same year, Louisiana also enacted the [Mental Healing Justice for Incarcerated People Act](#), which aims to improve mental health treatment for incarcerated individuals in Louisiana and requires the provision of mental health screenings upon intake, referring those suspected of mental health for evaluation, offering mental health first aid training to employees, and facilitating the continuity of care for inmates with serious mental health issues upon release. In [Texas](#), lawmakers voted in 2023 to allow the assessment of eligibility of certain inmates for supplemental nutrition assistance program (SNAP) benefits upon their discharge or release from incarceration.

While the above-referenced measures positively improve reforms related to the criminal system, there have also been efforts that have been regressive and imposed additional restrictions and laws that will negatively impact the progress made in these areas. For example, [Florida](#) lawmakers voted in 2023 to make it easier for defendants to be sentenced to death in that state, now requiring a determination of a specified number of jurors, rather than jury unanimity, for a sentencing recommendation of death. In 2023, Alabama added a host of [mandatory minimum sentences](#) for drug offenses in 2023. Mississippi also increased the minimum sentences for fleeing a law enforcement officer and carjacking in 2023. Virginia included [petit larceny](#) in its RICO and racketeering statute, which will lead to long prison terms for potentially non-violent crimes, while also [expanding the definition](#) and penalty for gang activity.

How Criminal Justice Reform Can Advance Equity in the South

Criminal justice reform improves equity in the South because African Americans often carry the burden of the high incarceration rates in the South. African Americans in the South historically have faced harsher treatment within the criminal justice system, including higher arrest rates, longer sentences, and limited access to resources for rehabilitation and reintegration. Reforming the criminal justice system is essential to dismantling these inequities and ensuring that all individuals are treated equitably under the law.

Legislative Efforts Related to Criminal Justice Reform

Of great significance during the 2024 legislative cycle was Louisiana's special session at the beginning of the year focused strictly on its criminal legal system. Newly-elected governor Jeff Landry made a campaign promise to be "tough on crime" and made good on his promises by convening the legislature to address violent crime, but effectively undid many of the progressive criminal legal system reforms enacted during the previous gubernatorial administration. [House Bill 10](#) focused on increasing prison sentences; adding nitrogen gas to lethal injection as a method for execution and resurrected the use of the electric chair; rolled back the "Raise the Age" law, now treating all 17-year olds charged with crimes, including misdemeanors, as adults; and eliminated parole for most people moving forward, with very few exceptions. As noted by the [Vera Institute](#) in a press release at the conclusion of the legislative session, the legislation enacted is very unlikely to do anything to increase public safety or reduce crime, but will "simply expand incarceration at great cost to the people of Louisiana."

Other states have followed a similar path with other regressive measures enacted in the 2024 legislative sessions. A few examples have been provided below:

1. **Georgia:** [Senate Bill 63](#) added 30 charges to the list of crimes that require judges to impose a cash bail to release a person from jail before trial, including many minor and nonviolent offenses like shoplifting, forgery, etc. The new law also effectively bans charitable bail funds in the state, which many have seen as a direct attack on the "Stop Cop City" protest movement which has relied on bail funds to get arrested activists out of jail.
2. **Tennessee:** [House Bill 1931](#)/[Senate Bill 2572](#) prohibits local governments from altering police traffic stop policies, which effectuated the overturning of a Memphis ordinance that banned traffic stops for things like broken tail lights, often used as "pretext" for more extensive searches.

Decriminalization

What Is Decriminalization?

Decriminalization in the South, as in other regions, is designed to address substance abuse as a public health issue rather than a criminal justice problem. This [approach](#) aims to reduce the harms of drug misuse, improve public safety and health, and redirect resources from criminal justice to health systems. It also seeks to diminish unjust racial disparities in drug law enforcement and sentencing, incarceration, and related health outcomes.

Decriminalization in the South

In 2021, the [United States Sentencing Commission](#) reported that drug offenses accounted for a significant portion of federal sentences in southern states. Mississippi had the [harshest](#) penalties, with an average of 121 months, South Carolina, with 115 months, and Louisiana with 105.

How Decriminalization Can Advance Equity in the South

The decriminalization of certain drug offenses in the Southern United States could lead to numerous positive changes, including reduced incarceration rates, economic benefits, and improve public health outcomes. However, the success of such initiatives would depend on careful implementation, sufficient support for treatment and prevention programs, and efforts to address public concerns and misconceptions. Decriminalization improves equity in the South by reducing the disproportionate arrest rate of African Americans, alleviate over-policing, remove barriers to employment, increase public health and eliminate the cycle of poverty and violence.

Metrics of success include:

- 1. Reduction in Arrests and Incarcerations:** Decrease in the number of arrests and incarcerations for drug possession.
- 2. Improved Public Health Outcomes:** Reduced rates of overdose deaths, increased access to treatment, and lower rates of diseases associated with drug use.
- 3. Social Equity:** Reduced racial disparities in drug law enforcement and sentencing.

Legislative Efforts Related to Decriminalization

The ACLU estimates that Black people are 3.6 times more likely than white people to be arrested for marijuana possession. In recent years, we've seen more movement on both a state and federal level related to the decriminalization of marijuana and the legalization of its use for both recreational and medicinal purposes. Several Southern state legislatures considered additional measures toward legalization during the 2024 legislative session, including the following:

1. **North Carolina:** [House Bill 626](#) would legalize the possession and sale of cannabis, citing the potential economic benefits of doing so on the state and the creation of legal jobs and tax revenue for its residents. Of note in the preamble of the legislation is a declaration that “[C]annabis prohibition, like alcohol prohibition before it, has been a wasteful and destructive failure.” The bill is still in the House.
2. **South Carolina:** [Senate Bill 423](#), which would permit medical marijuana use, passed in the Senate in February but has not seen any additional movement in the House as of the date of this brief. South Carolina’s House of Representatives was also presented with [House Bill 3561](#) which seeks to decriminalize the possession of 28 grams (1 ounce) or less of marijuana or ten grams or less of hashish, allowing for the issuance of a citation instead of arrest. The bill also seeks to decrease penalties for a first offense possession of less than one gram of methamphetamine or cocaine base and require completion of a drug treatment or rehabilitation program as part of sentencing. Unfortunately, this bill (brought by a Republican member of the legislature) failed in committee in a 6-3 vote down party lines.
3. **West Virginia:** [Senate Bill 386](#) and [House Bill 4873](#) sought to legalize and regulate cannabis for adults in West Virginia through the creation of ballot measures by county on the question of legalization in their respective jurisdictions. If approved, counties could begin to legalize cannabis and charge a 5% sales tax on its purchase. Neither measure gained final passage before adjournment of the 2024 legislative session.

Juvenile Justice

What is Juvenile Justice Reform?

Juvenile Justice Reform is an effort to transform the juvenile criminal system to reduce reliance on incarceration, address social determinants, and promote positive youth development. This reform typically [focuses](#) on rehabilitation, education, and prevention rather than punishment, with the goal of redirecting youth away from further criminal activity and toward productive, law-abiding lives.

Juvenile Justice Reform in the U.S. and the South

The United States has made [progress](#) in the treatment of youth offenders as juvenile incarceration rates declined by 77% between 2000 and 2020. Even though the South is more punitive than other regions, their incarceration of juveniles is on par with or below other regions in the country. However, African Americans are much more likely than white youth to be held in juvenile facilities. In 2019, the white placement rate in juvenile facilities was 72 per 100,000 youth under age 18. By [comparison](#), Black youth were 4.4 times as likely to be incarcerated (315 per 100,000).

How Juvenile Justice Reform Can Advance Equity in the South

Juvenile Justice reforms have the potential to advance equity in the South by reducing the incarceration disparity between Black and white youth. By implementing reforms, southern states could reduce the arrest of Black children, reduce recidivism and help promote healthy communities. As reported by [The Sentencing Project](#), there is significant research that finds that disparities at arrest and court intake are driven “at least partly by biased decision-making that treats white youth more favorably than comparable peers who are Black, Latinx, or Tribal”. These disparities also cross gender lines with other [research](#) suggesting that Black girls are also more likely to be criminalized and subjected to criminal and juvenile legal involvement at higher rates than their non-Black counterparts.

By implementing programs that prioritize rehabilitation over punishment and including community-based intervention, mentorship programs, and restorative justice practices in reform efforts, there is a greater chance of keeping juveniles out of determination facilities and engaged in activities that develop them into productive and contributing members of society. Designing these programs to meet the specific needs and

circumstances of minority and low-income communities can help to remove the systemic barriers facing these communities and break the cycle of poverty and crime that disproportionately affect these groups.

Additionally, juvenile justice reform must focus on eliminating inherently discriminatory practices within the juvenile justice system and the criminal legal system at large. This includes training for law enforcement officers and judicial officials to help them identify and counteract implicit biases, ensuring equitable access to quality legal representation, and implementing standardized, transparent criteria for decision-making at all stages of the juvenile justice process.

Legislative Efforts Related to Juvenile Justice

1. **Alabama:** [Senate Bill 235](#) was enacted this year, amending current law to make it illegal to knowingly disclose, use, or permit the use of the criminal records of juveniles.
2. **Florida:** [House Bill 417](#) would have required school districts to provide certain students in the Juvenile Justice Program with at least one annual opportunity to take the high school equivalency exam free of charge. Unfortunately, the bill was not enacted into law during the 2024 legislative session.
3. **Georgia:** [House Bill 873](#) creates juvenile treatment court divisions to provide an alternative to the traditional judicial system for the handling of juvenile criminal cases in child in need of services cases. The goal of these juvenile treatment court divisions, according to the bill, is to reduce the likelihood of family disruption, reduce the use of detention facilities, reduce recidivism, and increase the likelihood of successful rehabilitation through early, continuous, and intense judicially supervised treatment.
4. **Louisiana:** Despite other challenging reforms that stand to regress the progress of the criminal legal system in Louisiana, [House Bill 578](#) was enacted to establish the Back on Track Youth Pilot Program, designed to provide occupational or vocational training, life skills, healthy choices, and literacy instruction to justice-involved youth, prioritizing youth from low-income families.

Mental Health Support

What is Mental Health Support for Justice-Involved Individuals?

Mental Health Support refers to a range of services and interventions designed to address the mental health needs of individuals in the criminal justice system. These [services](#) aim to provide assessment, treatment, and support to improve mental well-being, reduce symptoms of mental illness, and promote successful rehabilitation and reintegration into the community.

Mental Health for Justice-Involved Individuals

A [substantial number](#) of individuals within the criminal justice system have mental health conditions. More than 40 percent of prisoners have a history of mental health problems, according to the Department of Justice. More than 24 percent have been previously diagnosed with major depressive disorder, 17 percent with bipolar disorder, 13 percent with a personality disorder, and 12 percent with post-traumatic stress disorder. On any given day, between 300,000 and 400,000 people with mental illnesses are incarcerated in jails and prisons across the United States, and more than 500,000 people with mental illnesses are [under correctional control](#) in the community.

How Mental Health Support for the Justice-Involved Can Advance Equity in the South

Addressing mental health is a critical step for providing equity in the South. Given the South's existing racial health disparities, the Southern prison population includes a significant number of African Americans suffering from mental health conditions. Policies and laws that create mental health support systems for justice-involved individuals or those likely to become justice-involved without such interventions can significantly improve racial and class equity in the South by addressing the underlying factors that contribute to criminal behavior which disproportionately affect marginalized communities. By providing access to mental health services, these policies can help to identify and treat mental health issues early, reducing the likelihood of recidivism and promoting rehabilitation rather than punishment. This approach acknowledges the role of mental health in criminal behavior and offers a

more effective alternative to incarceration, particularly benefitting those who are often underserved by the mental health system.

Furthermore, [integrating mental health support](#) within the justice system can mitigate the long-term impacts of criminal involvement on individuals and their communities. By ensuring justice-involved individuals receive appropriate mental health care, policies can help to break the cycle of disadvantage that often traps minority and low-income populations. This includes offering therapy/counseling and substance abuse treatment, both of which can address the [root causes of the behavior](#) and promote overall well-being. These reforms not only improve individual outcomes but also foster safer, healthier communities, thereby advancing racial and class equity across the Southern United States.

Legislative Efforts Related to Mental Health Support

Notable previous efforts related to establishing programs and initiatives that provide additional mental health support across the Southern states include:

- [Louisiana House Bill 278](#) (enacted in 2022) created the Psychiatric Collaborative Care Model which requires a health coverage plan that offers mental health and substance abuse benefits to provide coverage for mental health and substance abuse services delivered through evidence-based, integrated behavioral healthcare models such as the Psychiatric Collaborative Care model.
- [Georgia House Bill 1013](#) (enacted in 2023) requires health insurance companies to follow accepted standards of mental health and substance use disorder care.
- [North Carolina House Bill 103](#) (enacted in 2022) was a budgetary bill that included a \$2.9 million allocation for crisis services, including 9-8-8 Lifeline contact center funding.
- Mississippi House Bill 1222 (enacted in 2023) created the Mississippi Collaborative Response to Mental Health Act to provide training to ensure law enforcement officers are properly equipped to deal with situations involving mental illness.