



Justice Center

THE COUNCIL OF STATE GOVERNMENTS

Racial Disparities in the Criminal Justice System

Causes and Consequences

March 18 | Jessica Saunders, PhD

There is no single cause of racial disparities in the criminal justice system nor an easy fix.

- Racial disparity/racial disproportionality is when the proportion of a racial or ethnic group is greater than the proportion of the group in the general population.
- Law enforcement practices, community crime rates, access to resources, punitive sentencing policies, and racial and ethnic biases all contribute to racial disparities.
- States and localities have demonstrated that racial disparities in the criminal justice system can be reduced through various legislative and policy changes; however, eliminating disparities will require cross-system collaboration.

Agenda

- I. Racial disparities in the criminal justice system
- II. Causes and consequences of racial disparities in the criminal justice system
- III. How to reduce disparities

The criminal justice system impacts a large portion of the American public.

	Count	Rate
Arrests	5,991,651	1 in 44
Jail population	549,100	1 in 476
Probation population	3,041,348	1 in 85
State prison population	1,063,665	1 in 242
Parole population	754,191	1 in 342

Data limits our ability to fully understand disparities in our system

- Race and ethnicity are not consistently measured, resulting in different estimates of disparities.
- Criminal justice system data can only tell us who is getting arrested for crimes, not who is committing them.



60% of violent crime and 67% of property crime is never reported to the police

Disparities in the cases coming to the criminal justice system do not accurately depict disparities in behavior

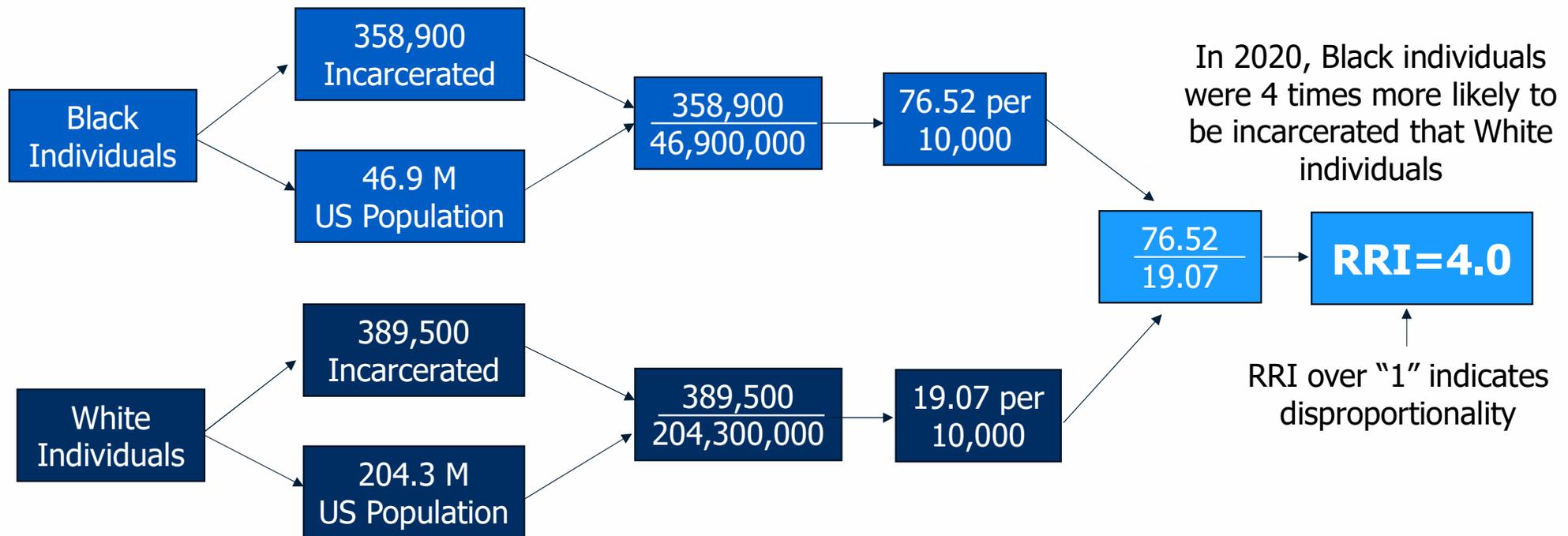
For example, Black individuals are **2.3x** more likely to be arrested than White individuals, but this masks important differences. Black individuals are more likely to be arrested and incarcerated for less serious criminal offending than White individuals.

	RRI for Black Individuals vs. White Individuals	
	Offender in Community	Arrested
Any Criminal Offense	Unknown	2.3x
Violent Crime	2.4x	2.0x
Marijuana Use/Possession	0.8x	6.2x

Black individuals were **2.4x** more likely to be an offender of a violent crime than a White individual, but only **2.0x** more likely to be arrested for it.

While Black individuals used marijuana at a slightly lower rate than White individuals, they were arrested for possession at a **6.2x** higher rate.

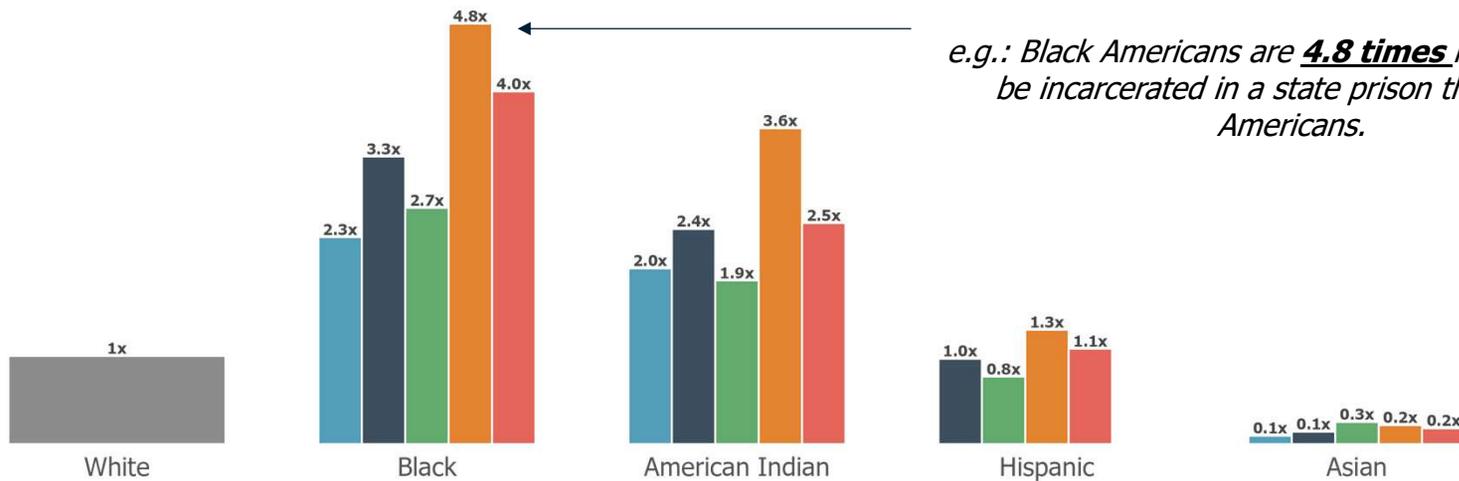
Relative Rate Index (RRI) is useful for summarizing the disparities between groups



Of all racial and ethnic groups, Black Americans experience the most punitive outcomes.

Relative Rate Indices of Criminal Justice Populations

Arrested Jail Probation Prison Parole

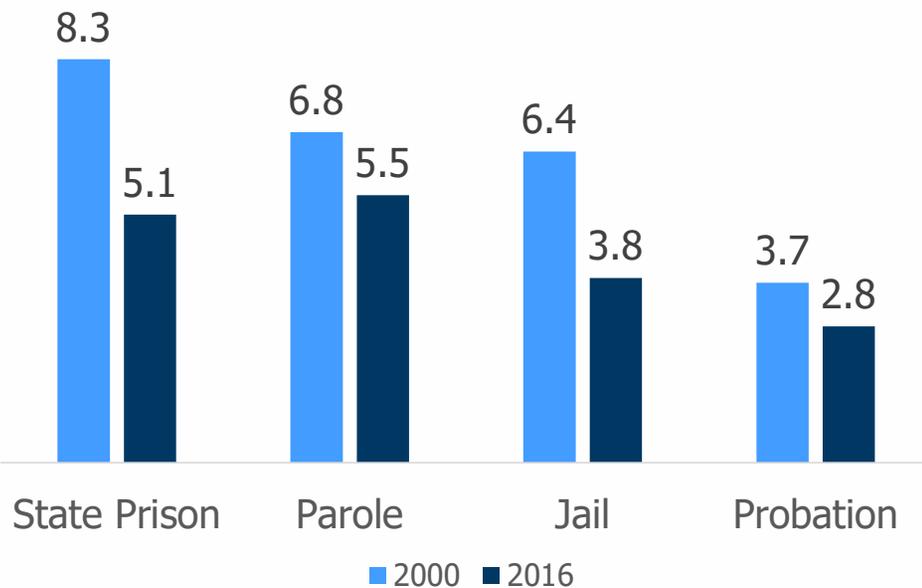


Relative Rate Index summarizes how much more or less likely other racial and ethnic groups experience the following outcomes, compared to White Americans.

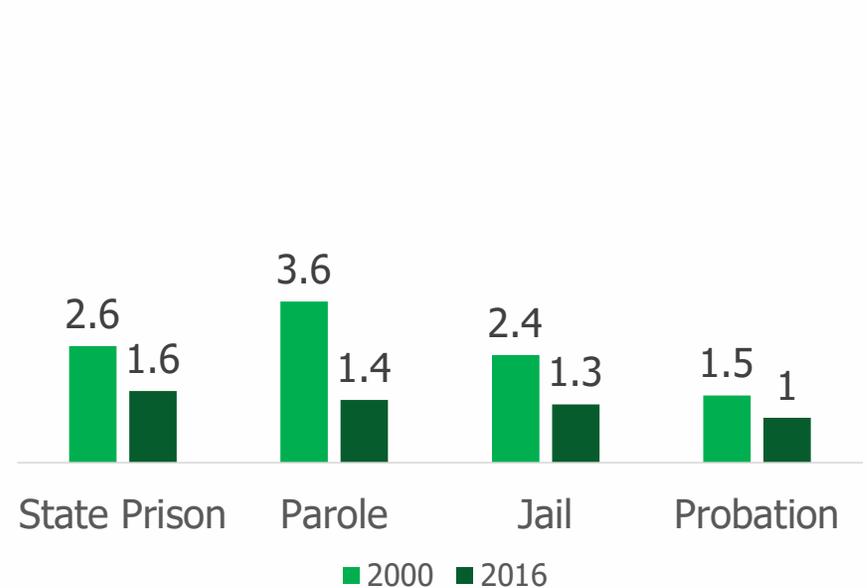
*e.g.: Black Americans are **4.8 times** more likely to be incarcerated in a state prison than White Americans.*

There has been some positive progress over the past two decades: Council on Criminal Justice found that disparities are narrowing

Relative Rate Ratios for Black individuals vs. White Individuals



Relative Rate Ratios for Hispanic Individuals vs. White Individuals



In the Midwest, disparities between Black and White individuals in the criminal justice system are higher than the U.S. average.

Relative Rate Ratios, Black Individuals Compared to White Individuals					
	Arrests	Jail	Probation	Prison	Parole
Illinois	7.6	6.6	Not reported	7.5	8.0
Indiana	4.3	1.9	Not reported	4.5	3.9
Iowa	6.0	8.3	6.1	8.5	6.3
Kansas	3.8	5.6	Not reported	6.5	5.6
Michigan	3.6	3.5	4.4	6.7	5.8
Minnesota	5.8	6.6	3.2	9.8	5.5
Nebraska	5.8	6.7	3.4	8.8	6.9
North Dakota	4.7	6.7	3.2	5.8	3.3
Ohio	3.4	3.4	3.4	5.5	5.8
South Dakota	6.1	5.8	Not reported	5.5	4.2
Wisconsin	4.2	6.9	3.8	12.3	8.1
United States	2.3	3.3	2.7	4.8	4.0

How to read the table:

In IL, Black individuals are on parole at an **8 times higher rate** than White individuals.

Disparities in the American Indian population are especially acute in a few Midwestern states.

Relative Rate Ratios, American Indian Individuals Compared to White Individuals					
	Arrests	Jail	Probation	Prison	Parole
Illinois	1.1	1.8	Not reported	2.9	2.1
Indiana	0.6	0.6	Not reported	1.6	2.1
Iowa	5.3	7.8	5.8	9.3	4.9
Kansas	1.0	1.9	Not reported	4.2	3.3
Michigan	1.2	2.2	2.1	3.0	2.9
Minnesota	7.9	14.4	6.3	16.6	12.1
Nebraska	6.7	8.4	5.8	9.5	5.5
North Dakota	6.5	8.9	3.7	5.8	3.7
Ohio	0.6	Not reported	0.5	2.0	0.9
South Dakota	13.6	10.9	Not reported	6.2	4.7
Wisconsin	4.9	8.6	6.1	8.5	6.6
United States	2.0	2.4	1.9	3.6	2.5

70 percent of the measures of racial disparity in criminal justice populations are **higher** than the national average.

How to read the table:

In MN, American Indian individuals are imprisoned at a rate that is **16.6 times higher** than White individuals.

The causes of racial disparities in the criminal justice system are complex and deeply rooted.

Overrepresentation of people of color in the criminal justice system is the result of multiple factors.



Historical legacy of inequality across all institutions, combining to create a system that negatively impacts communities of color



Policies, practices, and procedures that intentionally or unintentionally work better for White people than for people of color

Racial disparities begin in the community...

The unequal distribution of social, economic, and environmental resources shaping disparities in individual behavior and criminal justice system outcomes.

Living in Low Opportunity Neighborhoods

46% of Black youth
33% of Hispanic youth
32% of American Indian youth

9% of Asian/Pacific Islander youth
6% of White youth



Living in High Opportunity Neighborhoods

40% of Asian/Pacific Islander youth
39% of White youth

9% of Hispanic youth
7% of Black youth
3% of American Indian youth

... shape experiences with the criminal justice system...

Neighborhood, school, and family risk factors for criminal justice system involvement are highly correlated with race and ethnicity:

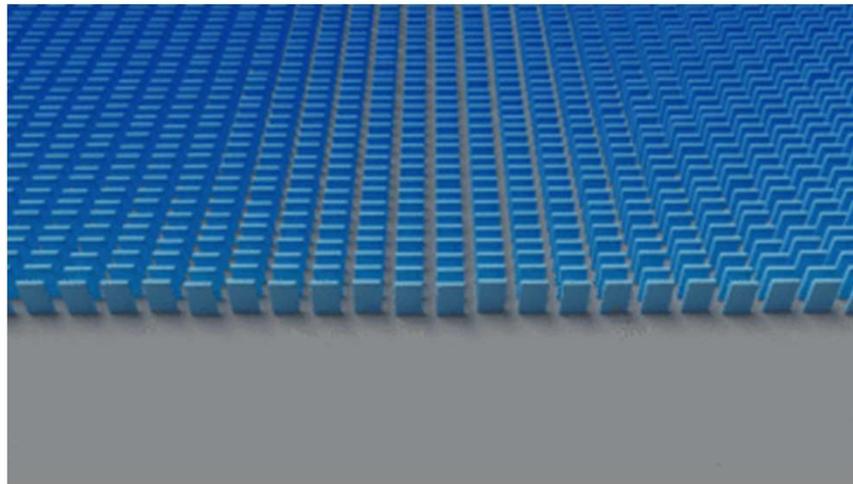
- Exposure to community violence and trauma
- Aggressive police presence and tactics in neighborhoods
- Failing schools and school-to-prison pipeline
- Lack of physical and behavioral health services
- Generational poverty and criminal justice system involvement
- Fewer positive youth development opportunities



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...and continue to compound as individuals move through the criminal justice system.

While disparities precede contact, they grow as a case moves through the criminal justice system. Small biases at each stage result in large disparities downstream.



Disparities manifest at key decision points in:

- Juvenile justice
- Law enforcement
- Arraignment, release, and pre-adjudicatory decisions
- Adjudication and sentencing
- Probation and community-based alternatives to incarceration
- Jail and prison custody
- Parole and reentry

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Black Americans face significantly more obstacles when reentering the community.



There are nearly 50,000 legal restrictions blocking access to jobs, housing, and educational opportunities.



Criminal record reduced callbacks by 50% for White applicants and 65% for Black applicants. Black applicants with a criminal record received a callback rate of 5%.



Formerly incarcerated Black individuals are **1.62x** more likely to be homeless than formerly incarcerated White individuals

There are four main ways the criminal justice system exacerbates preexisting racial disparities.

Disparate impact of “race neutral” policies

Explicit and implicit bias lead to harsher punishment

Resource allocation disadvantages low-income neighborhoods and defendants

Policies amplifying pre-existing economic inequality

1. Disparate impact of “race neutral” policies

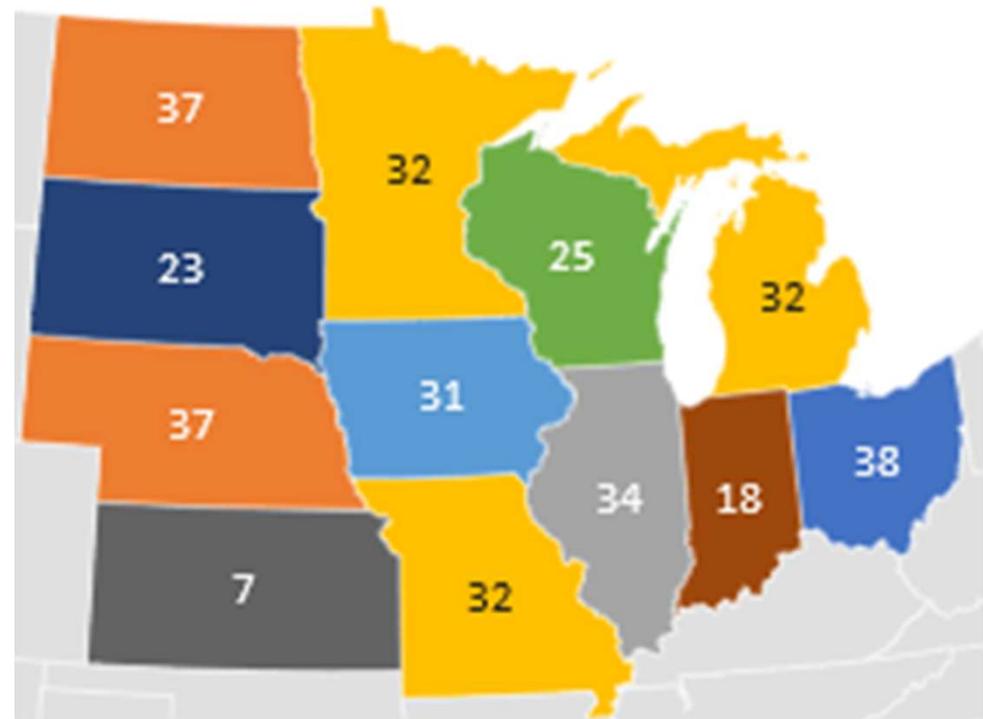
Disparate Treatment	Disparate Impact
<ul style="list-style-type: none">• Direct discrimination• Unequal treatment• Intentional• Prejudiced actions• Different standards	<ul style="list-style-type: none">• Indirect discrimination• Unequal consequences or results• Usually unintentional• Neutral actions• Same standards but different consequences

Examples: Sentencing policies like Three Strikes and the War on Drugs (and Rockefeller drug laws) have had a much larger impact on communities of color.

2. Resource allocation disadvantages low-income neighborhoods and defendants

Examples: Diversion, pretrial release, treatment, and community supervision programs often require payment, and Black individuals are less likely to have the resources required to pay bail or other fines and fees. In fact, only 40 percent of Black people make bail, compared to 53 percent of White people.

In 2020, the National Center for Access to Justice ranked states in their use of monetary sanctions across 17 policies to create a composite score. All but four states in the Midwest scored higher than the **national average of 28**.

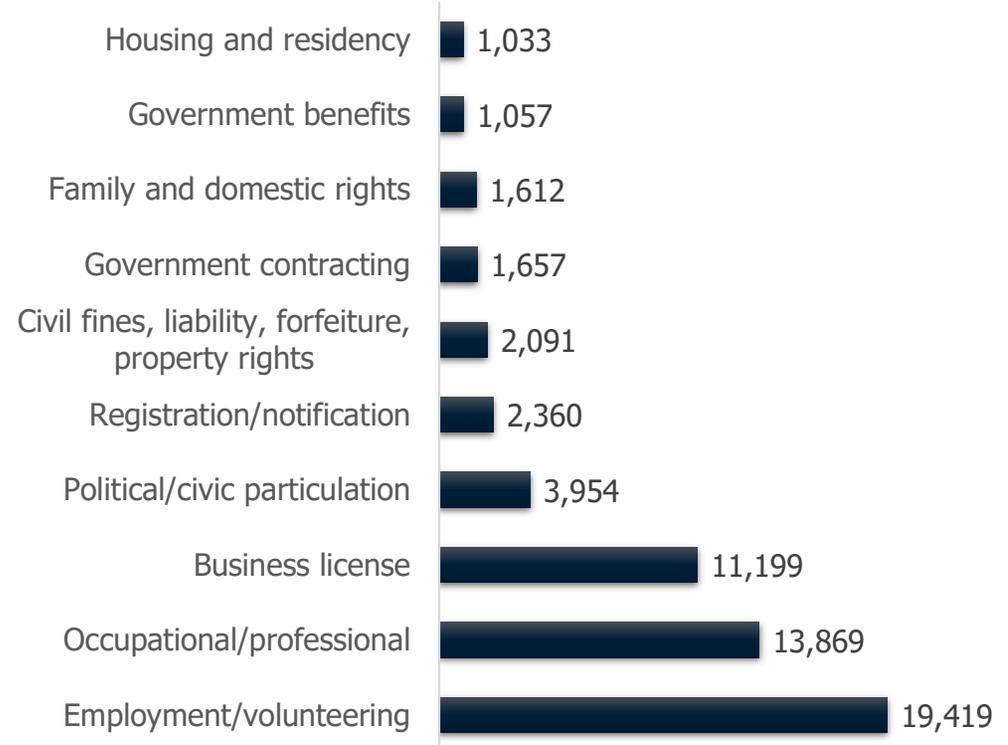


US state and local governments use monetary fines to punish an extraordinary range of crimes, misdemeanors and other violations.

3. Policies amplifying preexisting economic inequality

People who have been convicted of felonies and misdemeanors face more than 40,000 restrictions, most of which are imposed by states. Collateral consequences of a criminal record make housing, health care, and employment more difficult to obtain. This also has the unintended consequence of increasing the risk that someone will end up back in the criminal justice system.

Common Restrictions Following Criminal Convictions

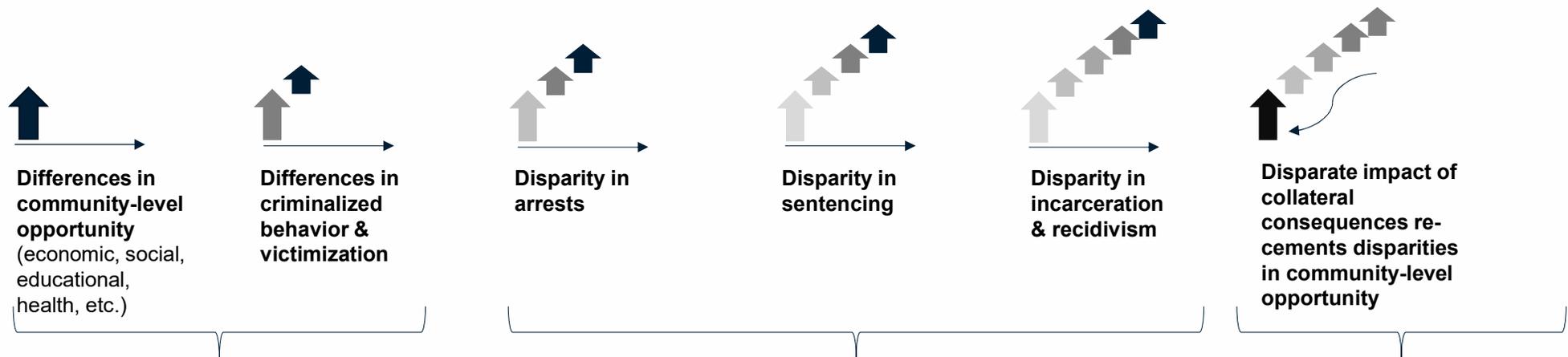


4. Explicit and implicit bias lead to harsher punishment

Explicit Bias	Implicit Bias
Attitudes and beliefs we have about a person or group on a conscious level. Biases and their expression arise as the direct result of a perceived threat.	Unconscious attribution of qualities to a member of a certain social group. Implicit stereotypes are shaped by experience and based on learned association between qualities and social categories, including race, ethnicity, and/or gender

Examples: Traffic enforcement officers stop BIPOC individuals more than their White counterparts when they can observe the race of the driver. Judges sentence Black individuals more harshly than White individuals with the same criminal history and offense type.

To advance equity, here are three areas to focus on, while recognizing that they all require work



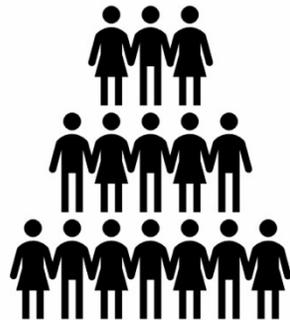
1. How can we reduce disparities in opportunity and safety?

2. Where, how, and why are disparities amplified as individuals move through the criminal justice system?

3. How can we disrupt the reproduction of disparity?

Step 1: Identify and disentangle sources of disparities using data.

Cases Entering the System



How do cases entering the system look different across race and ethnicity?

Justice System Treatment



How are cases moving through the system by race and ethnicity?

Step 2. Identify reasons for disparities, including key policies and decision points.

Why do cases entering the system differ by race and ethnicity?

- Do offending patterns differ by race and ethnicity?
- What system factors account for higher rates of criminal justice system contact by race and ethnicity?

Why are cases moving through the system differently by race and ethnicity?

- Which specific decisions are impacted by race and ethnicity?
- Which laws or policies systematically disadvantage BIPOC community members?



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