

Purpose of Me



Building the Table:

Advancing Race Equity in the Criminal Legal System

Introduction

In an effort to meaningfully advance racial equity in the criminal legal system, representatives from all components of the justice system, those directly impacted, and partners at the local, state, and federal level convened as part of a National Initiative to Advance Race Equity in the Criminal Legal System (Initiative) on June 17, 2022. The Initiative began as a partnership between organizations that represent criminal legal system stakeholders and persons with lived experience in the legal system. The convening was facilitated by persons with lived experience, and the development of this framework represents the product of this authentic engagement and collaboration by representatives of the criminal legal system. This Initiative and the convening were made possible through the support of the John D. and Catherine T. MacArthur Foundation and the efforts of those who volunteered their time and insights to produce this document.

Purpose

This Initiative is a gathering of criminal legal system stakeholders: representatives from all components of the legal system, those directly impacted, and partners at the local, state, and federal level working together to advance race equity in the criminal legal system. This Initiative is a first of its kind collaboration in which persons with lived experience led discussions with a comprehensive group of criminal legal system stakeholders on the nature of race-based inequities in the criminal legal system and the role that system stakeholders have in achieving more equitable outcomes for the communities they serve.

The elevated role of persons with lived experience is a fundamental principle of this Initiative. Persons with lived experience have a unique and expert perspective on the functioning of the legal system and its effect on people and communities. The partnership between system actors and community members, in particular those with lived experience, is the foundational step towards shaping policies that will successfully advance race equity and improve the system's capacity to administer justice and promote community safety and well-being. Building the table with a seat for all stakeholders allows for honest discourse and a high bar for action that both system stakeholders and communities could embrace.

Through these discussions, the participants reached a consensus that is outlined in this document: that all members of the criminal legal system, by performing their jobs and

engaging with communities, can work to achieve more equitable, safer, and more just communities. Developing new policies and practices to realize these goals will require authentic engagement between system actors and community members. Building a table for these discussions in communities throughout the country that bring together system actors and persons with lived experience in those systems is the essential first step to legitimate and sustained efforts to advance race equity throughout the country.

This document is intended to equip federal, state and local legal system stakeholders to explore and pursue new approaches to building stronger relationships with communities and the broader legal system to advance race equity. This document contains a unified statement of principles, policies and practical guidance to advance racial equity in the criminal legal system, as well as recent real world examples of policies and practices implemented by a variety of system stakeholders and community organizations throughout the country.

This document details some of the many policy and practice approaches that criminal legal system stakeholders, communities, and external partners can explore and adopt to achieve greater race equity. These policy and practice approaches are a mixture of evidence-based practices and new approaches that leverage collaboration between system stakeholders and authentic engagement with communities and, in particular, persons with lived experience.

The document groups these individual strategies into three broad categories of action agreed upon by all the meeting participants:

- 1) Coordinate Action Across System Stakeholders and Communities
- 2) Invest in Communities and Systems to Empower Them to Pursue Equity
- 3) Link Decision-Making to Desired Community-Level Outcomes

These strategies are linked into a broader framework that can be used to support new strategies to advance race equity beyond those described in this document. This framework is described in a consensus statement of principles with supporting rationale and background literature.

Statement of Principles

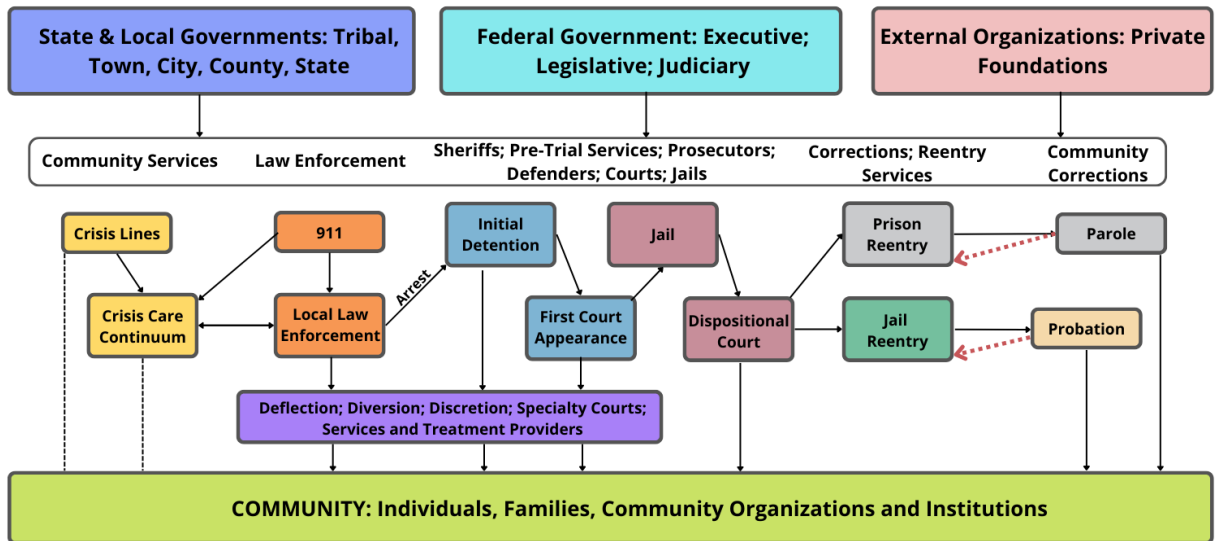
- The criminal legal system is comprised of justice system stakeholders, including law enforcement, prosecutors, defenders, pretrial services, courts, correctional centers, and community-based corrections (e.g., probation, parole, reentry services), as well as community organizations, public participants (e.g., jurors), and the tribal, local, state, and federal partners that jointly determine individual- and community-level outcomes.
- The purpose of the criminal legal system is to serve the community, including victims, young people with legal system involvement, persons with lived experience in the justice system, and their families through promoting public safety, holding individuals accountable for their actions, administering justice, facilitating the rehabilitation of and reentry to communities of system-involved individuals, and ensuring support services and assistance for victims of crime to seek justice and healing.
- Racial equity is essential for the criminal legal system to achieve these purposes. When the system creates a disparate impact or fails to ensure full access to the benefits of the legal system to any person or community because of race or ethnicity, that system is inequitable. Race equity in the criminal legal system is realized when all community members are fairly treated by the system in a manner that meets their needs and ensures each individual's human dignity is acknowledged.
- A broad and comprehensive approach is necessary for the criminal legal system to adequately address the many causes and consequences of racial and ethnic disparities. Coordination across all system and community stakeholders which elevates the perspective of those with lived experiences in the justice system will best recognize the full scope of how the system impacts community outcomes and how best to implement effective and sustainable policies and practices to advance racial equity within systems.
- Authentic community engagement is an essential and often underappreciated component of comprehensive efforts to address race equity. Authentic engagement that involves community members and persons with lived experience and their families, and victims and survivors in the shaping of system policies and practices, will best achieve desired community outcomes by

leveraging the specific expertise and competencies of the community and fostering trust between system stakeholders and community members.

Rationale and Background

The criminal legal system, its stakeholders, and the communities they serve strive everyday to administer justice, hold individuals accountable, promote public safety, and improve the health and well-being of community members. System stakeholders accomplish these goals primarily through the decisions they make about individuals as they encounter and progress through the legal system.¹ Importantly, many individuals entering the system interact with multiple stakeholders, which means that the outcomes for that individual and their community are jointly determined by the decisions of multiple system stakeholders. Further, governments, funders, and communities play a vital role in this joint decision making as well as improving the capacity of system stakeholders to achieve the goals of the system as outlined above.²

Figure 1: An Augmented Sequential Intercept Model



Yet, the system does not always equitably achieve these goals. People of color and, in particular Black Americans, are less safe in their communities³ and are disproportionately more likely to encounter law enforcement,⁴ interact with the criminal legal system,^{5,6,7} face barriers to accessing justice,⁸ and may receive longer sentences if incarcerated.⁹ Justice involvement is associated with significant collateral consequences (negative impacts such as inability to get a drivers license, housing, job etc.) for justice-involved persons, their families, and their communities.¹⁰ The negative effects of justice involvement continue to exacerbate these historical inequities in community safety,

economic opportunity, and the health and well-being of individuals and families that can lead to persistent cycles of justice involvement, poverty, and social, physical, and emotional harm.¹¹ Further, the criminal legal system faces many challenges to equitably serve communities given declining resources and increased complexity of work that can limit the ability of system stakeholders to promote public safety and best meet the needs of their communities.^{12,13}

Racial equity is both a product of the criminal legal system and an essential input to the system's ability to make communities as safe and just as possible. A comprehensive framework for policies and practices to improve race equity then must both address the root causes of racial and ethnic disparities and empower all system stakeholders to be as effective as possible in serving their communities. Achieving equity and addressing past and present harms will require authentic community engagement and elevating the voices of those directly impacted by the criminal legal system, especially including justice-involved individuals and their families, victims, and survivors of crime.

Policies and Practices to Advance Racial Equity

1. Coordinate Action across System Stakeholders and Communities

The criminal legal system in every community consists of many distinct stakeholders and institutions that jointly influence the safety and well-being of that community. System stakeholders can better serve communities by recognizing this shared responsibility and coordinating their decision-making to work towards making communities safer and healthier through the comprehensive administration of justice and rehabilitation for every individual who becomes involved with the criminal legal system.

The full potential of system stakeholders and communities to realize safer and healthier communities rests in trusting and effective partnerships between system and community institutions. Community members, including those with lived experience in the criminal legal system, already provide vital services for justice-involved persons, victims of crime, and their families. Effective partnerships recognize the joint legitimacy of community and system stakeholders, empower community institutions, and elevate their authentic voices in the design and implementation of policies and practices to advance racial equity.

Authentic Community Engagement

- Building trusting relationships requires an initial outreach and invitation that brings individuals together.¹⁴ Both system stakeholders and community members must engage in trust building to authentically exchange perspectives, learn each other's stories and backgrounds, and understand each other's needs and desires for community outcomes. Trust is earned and built through the willingness to engage, listen, and collaborate.
- Community members, victims, survivors, and persons with lived experience are those who have been directly impacted by the decisions of system stakeholders. These experiences contain essential insight into how and whether proposed policies and strategies will meet community needs and achieve greater racial equity. Effective coordination between system stakeholders and communities to create and drive policy change requires the legitimate recognition of these community perspectives as expert and akin to the professional experience of system stakeholders.

Authentic community engagement in practice

In Yolo County, California, the District Attorney reached out to community leaders to bring representatives from the county's diverse cultural groups for monthly meetings to improve communication between prosecutors, law enforcement and the community. The resulting Multi-Cultural Community Council regularly advises the DA on policy decisions and partners with the DA's office to administer a Youth Leadership Academy to educate community members on justice issues and have law enforcement engage in open discussion with community youth.^{15,16}

In Eagle County, Colorado, local police departments have partnered with community organizations to form the Eagle County Law Enforcement Immigrant Advisory Initiative.¹⁷ Highlighted in the President's Task Force on 21st Century Policing,¹⁸ police departments in Eagle County engage in culturally specific training, invest in community outreach targeted at non-English speaking communities, and participate in a community designed program in which volunteer community members serve as interpreters for law enforcement.

The opportunity: Communities, including persons with lived experience in the criminal legal system, can have the knowledge and willingness to contribute to the activities of system stakeholders. An initial invitation to community members can be as simple as a phone call or email. More important than knowing who to call, is the desire to bring representatives from multiple communities and cultures together with the intent of legitimizing the community's voice as an essential input in system decision making. Authentic engagement means involving communities early, especially for the design of new policies or practices that will affect communities.

Within and Across Systems Coordination at the Local Level

- Because all system stakeholders jointly determine individual and community outcomes, no single system stakeholder can influence these outcomes. Coordination across system stakeholders enables individual stakeholders to understand how their decisions ultimately affect a person's outcome in the criminal legal system and the extent to which other stakeholders influence those outcomes. Through coordination, multiple stakeholders can align their decision

making to best achieve desired outcomes for individuals and ultimately their communities.

- Multiple systems outside the criminal legal system, including schools, health systems, child protective services, housing, employment and others, affect the lives of individuals and whether their individual or community outcomes are equitable.¹⁹ A lack of coordination across these systems can undermine efforts of criminal legal system stakeholders to advance racial equity. Coordination between legal system stakeholders and these other systems must be facilitated by the community, around whom all these systems intersect. Broader inter-system coordination can strengthen the efforts of legal system stakeholders to address root causes of inequity by leveraging the distinct strengths, expertise, and influence of each system.

System coordination in practice

In 2014, the Substance Abuse and Mental Health Services Administration (SAMHSA) established Access to Recovery, a mechanism to fund Single-State Agencies (SSAs) to support community-based organizations, including faith-based organizations that provide treatment for substance use disorders.²⁰ A key feature of the program was that individuals referred to drug treatment, even by a drug court or reentry program, would have a genuine independent choice of a variety of high quality and adequately funded service providers.

In a study of the Indiana Access to Recovery (ATR) program, researchers found that individuals released from prison who subsequently received treatment services for substance abuse disorders through an ATR provider were substantially less likely to use alcohol or drugs, more likely to report positive social interactions.²¹ Notably, while the overall rate of recidivism for program participants was slightly lower than the overall average, individuals who received services from agencies that provided a mixture of reentry services in addition to substance use treatment were significantly less likely to recidivate.

The opportunity: Within the criminal legal system, system stakeholders can explore new ways to distribute resources or cases to leverage the strengths of each stakeholder.²² System stakeholders seeking to directly address social causes of health in their

communities can partner with organizations from other systems, such as healthcare or education, as well as smaller community-led organizations. These multi-system collaborations can be facilitated by other public offices, such as departments of health, or through authentic outreach to community-led organizations. Even simple practices, such as education about 988, the new nationwide three-digit dialing code that routes callers to the 988 Suicide & Crisis Lifeline²³ (in contrast to 911 for other emergency services) can facilitate coordination across systems by better matching individuals to the services that can best address their specific needs.

2. Invest in Communities and Systems to Empower Them to Pursue Equity

Staffing, funding, and time are natural constraints on all systems. Yet, declining budgets,²⁴ mistrust and fear of discrimination and violence,²⁵ as well as changing expectations of criminal legal system stakeholders to meet the needs of their communities and make use of new technologies have tightened these constraints. Backlogs, burnout, attrition, poor compensation, and low funding hinder the ability of the criminal legal system to not just ensure greater racial equity, but to make communities safer or healthier at all.²⁶ Investment in systems stakeholders and community organizations that provide vital services to communities, victims of crime, and justice-involved persons will ensure the needed time and resources to dedicate to activities to improve equity without compromising the other essential functions of the criminal legal system.

System Investment

- Virtually all system stakeholders have experienced inadequate staffing, stagnant compensation, or insufficient resources,^{27,28,29} challenging their ability to best ensure the fair administration of justice, the pursuit of safer communities, and full engagement with communities. These challenges have likely been worsened by disruptions from the COVID-19 pandemic,³⁰ and have resulted in further strain, burnout, vicarious trauma, and losses that can undermine the functioning of stakeholder offices. Inadequate staffing, poor compensation, and moderate implementation of evidence informed practices suggests that there is opportunity for new models of staffing, resourcing, and workflow that can improve the capacity

of system stakeholders to pursue justice, build trust and make their communities safer and healthier.

System investment in practice

In Washington D.C., public defenders tend to manage more complex and time-consuming criminal cases when compared to cases of private attorneys.³¹ The Washington D.C.'s Public Defender Service (PDS), similar to other "state-level" functions in the District is appropriated funding by Congress. In annual budget requests, explicit justification is given to ensure sufficient staffing and resources to maintain a staff of specialized attorneys so that defenders can spend adequate time with defendants and implement a client-centered approach that reduces time spent in jail, empowers defenders to assess underlying needs of defendants, and better matches defendants to programs to meet those underlying needs.³²

The opportunity: Every criminal legal system stakeholder can benefit from a clear understanding of how staffing and resourcing can translate into improved individual- and community-level outcomes. Because system stakeholders jointly determine these outcomes, stakeholders have an opportunity to strengthen budget requests through partnerships and sharing of evidence to support investments that lead to more effective operation and improved equity in outcomes.

Community Investment

- Community members, including those with lived experience in the criminal legal system, already provide vital services for justice-involved persons, victims of crime, and their families.³³ Community-led and culturally-specific organizations are among the most effective in engaging with their local communities, meeting their needs, and addressing the root causes of inequities.³⁴ Despite their effectiveness, these organizations often face barriers to accessing needed resources and funding. Investment in communities will require removing these barriers, such as onerous application and reporting requirements that disadvantage community-led organizations seeking and securing public and private foundation funding.
- Unlike system stakeholders, community members often don't have access to the specialized training and education that are necessary to fully engage with system

fund. This information gap can put community members and their perspective at a disadvantage in policy discussions. Working to resolve this kind of opportunity gap through education, training, revising bureaucratic systems requirements, and authentic community engagement allows community members and persons with lived experience to fully participate in the design and implementation of policies and practices.

Community investment in practice

In 2021, Cook County, Illinois established a 50-member taskforce with representatives from other Cook County agencies, advocates, community-based organizations, and philanthropic, civic, and academic institutions to advise on the county's strategic investments from a fund dedicated to projects addressing historical disparities and disinvestment in Black and Latinx communities.³⁵ One example of these strategic investments is a grant program to invest in community-led organizations that serve areas with disproportionately high rates of gun violence.³⁶ Tiered funding tracks with staggered deadlines provide organizations that may have smaller budgets and/or grant writing capacity with time to submit strong applications and be evaluated among similarly situated organizations.³⁷ The grant funding is provided on a quarterly basis, rather than a reimbursement, and grantees may request a funding advance. Organizations that are led by, support or employ community members with criminal convictions are not barred from applying on that basis.

The opportunity: Counties and states invest over \$100 billion annually in justice and public safety services, including law enforcement, courts, corrections, and fire services.^{38,39} Recognizing that community-led organizations can more equitably render services that support individuals and their communities, the National Association of Counties and the National Criminal Justice Association, with support from the U.S. Department of Justice's Bureau of Justice Assistance convened a working group of county stakeholders, State Administering Agency representatives and community-led organization leaders to develop principles, strategies and practices for equitable grantmaking⁴⁰ to improve the capacity of community-led organizations to provide essential services and promote community safety.⁴¹

3. Link Decision-Making to Desired Community-Level Outcomes

More equitable outcomes require that all criminal legal system stakeholders consistently and reliably make decisions informed by desired community-level outcomes. Accurate and readily available measures, such as those already collected from case management systems or crime statistics, are essential components of decision-making, but broader sets of data, measures, and qualitative information about person-level and community outcomes can better inform decision making at every point of system involvement. A criminal legal system that engages with the whole person, and not just their contribution to caseloads or crime statistics, will best leverage the full power of the system and its partners to meet that person's needs and ultimately make their community safer.

Employ System Off-Ramps

- Progression through the legal system should only be exercised if it meets the desired individual- and community-level outcomes of safety, justice and well-being. System stakeholders should establish partnerships with non-legal system stakeholders (e.g., crisis services, behavioral healthcare, substance use disorder treatment, homelessness prevention, social safety net services)⁴² so that stakeholders can opt to match a person with services that address underlying needs (e.g., unmet behavioral health needs, homelessness, economic insecurity) to reduce further criminal legal system involvement and increase future success. System stakeholders must engage with communities, persons with lived experience, and victims when designing and implementing system off-ramps to ensure that persons of color do not experience barriers to fully accessing and benefiting from their services.
- Empowering system stakeholders to limit a person's justice involvement enables them to pursue more equitable community outcomes while maximizing their ability to perform the essential functions of their office. Employing off-ramps as early as possible in an individual's period of justice involvement reduces the negative impacts as individuals progress through the criminal legal system.

System off-ramps in practice

In Multnomah County, Oregon, the District Attorney, in collaboration with local law enforcement, the defense bar, treatment providers, courts, and parole/probation,

designed and implemented Treatment First, a drug diversion program for drug possession charges in which individuals choosing to participate may have the option of having their charges dismissed or reduced in exchange for voluntary participation in abuse and addiction treatment.⁴³ When combined with the reduction of most felony possession charges to misdemeanors in Multnomah County, the program has significantly reduced the negative impacts of justice involvement stemming from a possession charge by shifting the focus to addressing the needs of individuals impacted by abuse and addiction. Further, following implementation of the program, the Oregon Criminal Justice Commission found that Multnomah County had not just reduced the overall level of felony convictions for possession of a controlled substance, but that earlier racial and ethnic disparities in these rates were eliminated.⁴⁴

The opportunity: Across the country, many jurisdictions have adopted some form of system off-ramp, many of which rely on relationships with community organizations or institutions.⁴⁵ System stakeholders should assess first if there are needs of system involved individuals that might be better met by a non-legal system entity and then consult existing models, such as diversion or deflection programs, as templates for their own potential policies. Evaluation of system off-ramps is essential, particularly with regard to factors that drive the access to system off-ramps, such as eligibility criteria or other assessments. These are areas where unintended bias can enter decision-making and erect barriers for individuals who might significantly benefit from off-ramps or other alternatives to criminal legal system involvement.

Center Decision-Making on the Person

- Decision making that is centered on the person seeks to best address the needs of the individual, victims of crime, and their communities. Meeting these needs requires that stakeholders understand the implications of their decisions for the individual, victims of crime, and their communities. For example, an individual's ability to pay child support may be undermined by debts that accumulate during a period of incarceration, leading to further financial instability for the individual and those they support. Decision-making centered on the person is most effective when it is based upon the coordinated decision-making of multiple system stakeholders.⁴⁶

- Decision-making by each system stakeholder must strive to be free from racial hostility, bias, stigma, and apathy. A human-centered approach in the criminal legal system actively addresses decisions and practices that increase harm, trauma, and those that can move communities away from safety and well-being, as well as strain trusting relationships between system stakeholders and communities.
- A system that centers its decision making on the person must embrace procedural justice.^{47,48} Whether a person is treated with dignity and respect, has a voice in their experience with the legal system, and perceives that people in the justice system are fair and trustworthy is determined by many decisions about conduct and practice by all the individuals a person encounters in the criminal legal system.⁴⁹ These decisions must be made thoughtfully to give the criminal legal system legitimacy and ensure that all persons involved are met with a system that promotes their ultimate safety and well-being as well as that of the community.

Centering decision-making on the person in practice

Created in 2019, Survivors FIRST (Facilitating Information and Resources for Survivors of Trauma) is a program in partnership between YWCA and the King County Prosecuting Attorney to directly connect survivor-defendants, victims of abuse who have been accused of a domestic violence-related crime, to intervention services without criminal charges.⁵⁰ The program places special emphasis on diverting survivors of color to culturally appropriate domestic violence and intimate partner violence services, helping to reduce the racial disproportionality of survivors of gender-based violence in the criminal legal system.

The opportunity: All system stakeholders can embrace principles of procedural justice in their operations. Any system stakeholder can engage with their community and individuals involved in the system to better understand their needs. The ability of any one stakeholder to make decisions to best meet the needs of individuals and their communities improves the more they can coordinate with other stakeholders, either through inter-agency communication such as in criminal legal coordinating councils or through the establishment of programs designed for populations with specific needs. Authentic engagement with communities in the design of these programs is essential to ensure equitable access to these programs so that they better address community safety and well-being.

Embrace Individual- and Community-Level Outcomes as Measures of Success

- In all systems that deliver essential services, what is measured represents that system's priorities. Arrests, caseloads, dockets, pleas, violations, and recidivism rates are among the common measures that reflect the resource demands and functioning of the criminal legal system. However, these measures do not fully capture whether the system is functioning well or fulfilling its broader purpose to make communities safer and whether these benefits are realized equitably. Communities and system stakeholders must establish a shared understanding of community safety, well-being, and the equitable administration of justice and how progress towards these shared goals can and should be measured.
- All system actors have the opportunity to incorporate measures of community safety and well-being into their decision making. Qualitative measures of community-level outcomes may better monitor success by expanding measurement to outcomes beyond individuals who are justice involved. For example, using recidivism rates to measure success may not reflect underlying public safety⁵¹ while also obscuring the outcomes for individuals who do not relapse or do not have a first encounter with the justice system, preventing assessment of how policy and practice may have achieved better safety and well-being for these individuals.⁵²

Embracing individual- and community-level outcomes as measures of success in practice

Over 800,000 individuals in jail and prison have child support obligations, which can increase during periods of incarceration. These debt obligations combined with employment challenges during reentry can lead to further financial distress and recidivism, again delaying payment of child support and allowing debts and interest to accumulate.⁵³ The Families Forward Demonstration is a program funded by federal Section 1115 waivers that empowers local child support agencies to establish job training for high demand work with possibility of career advancement.⁵⁴ In a study of program implementation and outcomes, program participation was found to be associated with increased payment of child support and greater payment amounts.⁵⁵

The opportunity: Programs such as Families Forward measure success in terms of the individual- and family-level outcomes of job training and successful child support payment. This measure of success is related to recidivism, but is a more direct measure of whether community needs are successfully being met, as opposed to only measuring a subset of failures, concealing possible services that could have been employed to avoid future system involvement and improve individual- and community-level outcomes.

Summary

The purpose of this Initiative is to bring together all criminal legal stakeholders, community members, and government partners to identify policies and practices that can meaningfully advance racial equity in the criminal legal system. Criminal legal system stakeholders recognize that administering justice and making communities safer requires that the system constantly strive toward achieving greater equity. The presence of any racial and ethnic disparities in the criminal legal system necessitates urgent action by system stakeholders to remedy this injustice.

Disparities that are the result of historical inequities, racial trauma, present-day discriminatory treatment of people of color, and the fragmented nature of system decision-making demands a broad and comprehensive set of policies and practices that address all contributing factors. The criminal legal system exists to serve communities, who ultimately bear the outcomes of decisions made by system stakeholders. Thus, community members and, in particular, persons directly impacted by the criminal legal system must be at the forefront of efforts to advance racial equity in the administration of justice and promotion of community safety. Authentic community engagement requires forging trust between system stakeholders and communities, centering community members in system decision making, and empowering them to act as equal partners in the shaping of policies and practices so that the system can fully meet the needs of communities, treat all persons equitably and with dignity, and realize greater justice, fairness, and safety for all.

This initiative represents a historic coalition of representatives from all elements of the criminal legal system and the communities they serve. We are committed to eliminating racial disparities and advancing racial equity throughout the criminal legal system. The framework and policies proposed herein outline a comprehensive and collaborative

approach that can be embraced at the tribal, local, state, and federal levels in communities throughout the country to meaningfully address the root causes of inequity.

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Endnotes

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