

Supported by the John D. and Catherine T. MacArthur Foundation

**MacArthur Foundation
Safety + Justice Challenge: Racial Equity Cohort**

Why Not Prosper BARBwire PAR Project Final Report

**Darlyne Bailey, Ph.D.
Faith Bartley
Delores Brown
Joyce Granger
Sappho Fulton
Kelly McNally Koney
Rev. Dr. Michelle Anne Simmons**

March 27, 2023

Introduction

Racial disparities in imprisonment rates are alarmingly high, despite significant reductions over the years. Nationally, the imprisonment rate among Black people fell 40% between 2000 and 2020; still, it remains 4.9 times the rate of White people (Sabol & Johnson, 2022). In contrast, Philadelphia incarcerates Black people at *9 times* the rate of White people (Melamed, 2022).

Investments in carceral system reform, including major funding from the John D. & Catherine T. MacArthur Foundation as part of its Safety + Justice Challenge, led to a 44% decrease in the Philadelphia prison population between July 2015 and September 2022 (City of Philadelphia Office of Criminal Justice, 2022). However, racial disparities grew: Declines in the prison population were greater among White people, falling 57% compared to 40% among Black people, and the population of Black people in Philadelphia prison system *increased* from 68% to 72% (City of Philadelphia Office of Criminal Justice, 2022).

In 2021, Why Not Prosper – “a grassroots organization founded by formerly incarcerated women for formerly incarcerated women” (Why Not Prosper, n.d., para. 1, <https://www.why-not-prosper.org/>) – led by Rev. Dr. Michelle Anne Simmons and the City of Philadelphia successfully co-applied for funding from the John D. & Catherine T. MacArthur Foundation’s Safety + Justice Challenge Racial Equity Cohort for the “Community Reinvestment Initiative.” The goal of the grant was to directly address the disproportionately high rates of incarceration among Black and Brown people in city jails through community-based research and engagement. This community-City partnership was one of four Safety + Justice Challenge grants awarded across the country to develop new models of eliminating racial and ethnic disparities in criminal justice systems (Safety + Justice Challenge, 2022).

With funding for two-years, the Community Reinvestment Initiative aims **to reduce disparities in arrests and jail admissions**. It seeks to do this using three strategies: 1) a cost analysis of criminal legal spending and reinvestment opportunities conducted by the Vera Institute of Justice; 2) a “BARBwire” Participatory Action Research (PAR) project to determine community needs and priorities for reinvestments; and 3) a pilot program developed from the results of the PAR research and funded by Why Not Prosper, Philadelphia’s MacArthur Safety + Justice Challenge Community Advisory Committee, and the City to directly reduce the number of Black and Brown people in Philadelphia jails.

This report provides an overview of the Community Reinvestment Initiative’s BARBwire PAR Project, presents key findings, and makes recommendations for future action to reduce the disproportionate number of Black and Brown people in the Philadelphia jail system. It also introduces the pilot program identified from the BARBwire PAR Project research to be developed and receive priority funding for implementation in 2023.

BARBwire PAR Project Overview

The BARBwire PAR Project was one component of Philadelphia’s Safety + Justice Challenge Racial Equity Cohort funded Community Reinvestment Initiative. The BARBwire PAR process was conceived by the Community Reinvestment Initiative’s “Educational Partner,” led by Dr.

BARBwire PAR Project Final Report

Darlyne Bailey of Bryn Mawr College and her colleague, Kelly McNally Koney of The Kyla Alliance, LLC. Together they provided the framework and training.

“BARB” stands for Breaking All Racial Barriers. Using the acronym BARB to define the PAR Project was purposeful and important. It spoke to the values of the project and served to focus and inspire the work. The BARBwire PAR Project was designed to uplift and amplify the voices of those most directly impacted by the criminal justice system in efforts to identify programs and policy changes necessary to create more equitable outcomes for Black and Brown communities. Specifically, it sought **to identify ways to reinvest some of Philadelphia’s criminal justice dollars into community-based initiatives that would better serve the City’s Black and Brown people**. The BARBwire PAR Project took place from November 2021 through December 2022, partnering with the Vera Institute of Justice in the early months to better understand just how money has been invested in the City’s criminal legal system, to provide context and guidance for the research, and to highlight opportunities for future efforts.

The BARBwire PAR Project consisted of two teams: the Action Team and the Administrative Team. The Action Team was made up of women representing Why Not Prosper; Sisters With A Goal (SWAG), the social justice arm of Why Not Prosper; and the Educational Partner. The Action Team was also the recipient of information, work, and strategic thought from numerous other organizations and groups – including Philadelphia’s Community Action Council and the Defender Association of Philadelphia – in its planning, data collection, and community engagement efforts. The Administrative Team was comprised of officials from the City of Philadelphia’s Office of Criminal Justice and met periodically with the Action Team.

The Action Team was the core of the BARBwire PAR Project. Engaging women from SWAG was a priority for the Action Team from the outset. SWAG brings together Why Not Prosper graduates and alums with other formerly incarcerated women to “to advocate and educate by amplifying the voices of those women who have been systemically silenced by the criminal justice system” (Why Not Prosper, n.d., para. 1, <https://www.why-not-prosper.org/swag.html>). The centering of SWAG members’ voices and stories throughout the research process was one of the most important and innovative aspects of this work. It was a central way in which the BARBwire PAR Project engaged community and integrated direct, lived experience with the criminal justice system in all phases of the research.

Lived experience with the criminal justice system positioned Action Team members as BARBwire PAR Project leaders and *community experts*. Both the leadership and the narratives of the Action Team were essential to begin shifting the conventional power dynamics of research and policy making. Indeed, the BARBwire PAR Project enacted a less conventional approach. In this qualitative study, the BARBwire PAR Project challenged the traditionally top-down, expert-driven, closed systems in which research is conducted and policies are made by centering community expertise. Throughout its work, the Action Team engaged people in Black and Brown communities across Philadelphia, people who are typically left out of the discussions on how to change the inequitable and oppressive systems and practices that disproportionately and negatively affect them. The Action Team elevated the direct, real-life impacts of criminal justice policies and practices, which are often overlooked and ignored, in conversations about a future in

which Black and Brown people and communities no longer meet disproportionate harms. Ultimately, the Action Team used the lens of personal and community lived experience to identify drivers of systemic inequities in Philadelphia’s criminal justice system, priorities for investments in non-carceral responses to public safety, and recommendations for how Philadelphia’s criminal legal funds can be reallocated to achieve more racially just and equitable outcomes, all of which are detailed in this report.

PAR: An Iterative Process

The BARBwire PAR Project followed an iterative, six-phase process introduced by the Educational Partner: Dialogue, Discovery, Data Review & Analysis, Dissemination, Developing Plans, and Delivering Results (figure 1). After an introductory training session on the basics of PAR and discussion of the proposed process, the Action Team affirmed the following process, specified benchmarks for its work, and went through the phases.

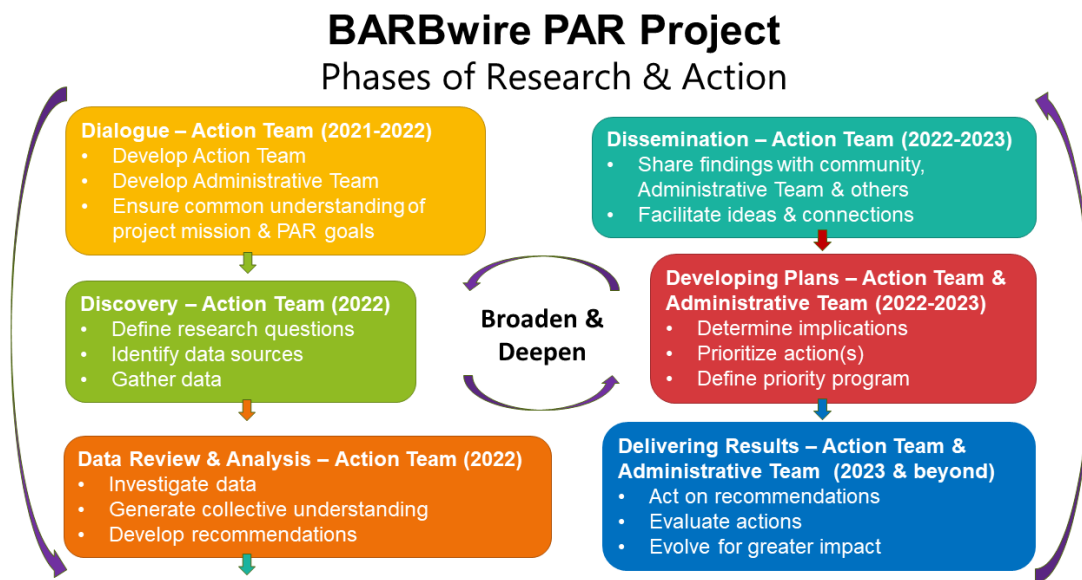


Figure 1: BARBwire PAR Action Team, 2022

Research Questions

The BARBwire PAR Project was community-driven and fluid, relying on grounded theory. This meant inquiry evolved as new questions emerged.

The proposal for the Community Reinvestment Initiative began with one broad research question: **How can some of Philadelphia’s criminal justice funds be reallocated to better serve Black and Brown communities?** This question provided the basis for the Action Team’s discovery.

Over the course of the BARBwire PAR Project, the Action Team deepened its inquiry, exploring additional questions as prompted by the data until they could make recommendations and define

a pilot program toward which reallocated funds might be directed. In the end, the Action Team investigated a total of eight questions (figure 2).

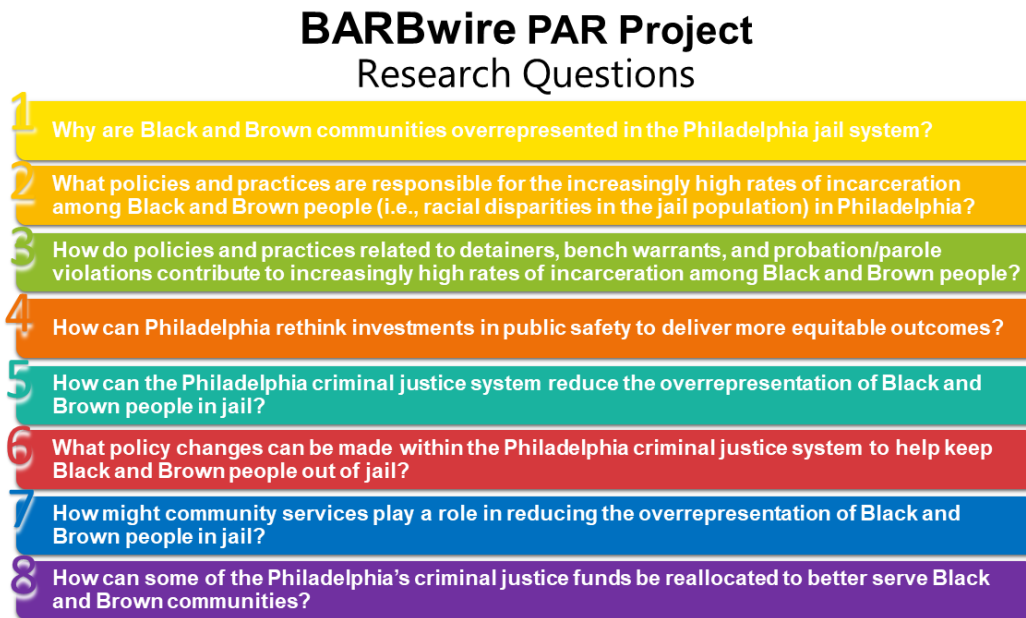


Figure 2: BARBwire PAR Action Team, 2022

Data Collection

The Action Team met 14 times between November 2021 and December 2022. Action Team members from Why Not Prosper and SWAG served as participant researchers, gathering data from external sources and sharing their own experiences as a vital part of the BARBwire PAR Project. Data was also collected from the following sources:

- Archival Data: Scholarly articles, newspaper articles, and other publicly available materials
- Collaborative Work Sessions: 2 sessions with Defender Association of Philadelphia (document probation/parole violation procedures, explicate proposed pilot program)
- Community Surveys: 31 respondents
- Community Town Hall via Zoom and FaceBook Live: 68 participants (Probation and Its Collateral Consequences, 11/29/22)
- Court Watches: 2 days of observations (20 detainer cases, 14 probation violation cases)
- Focus Group: 47 participants
- Individual Interviews: 12 interviews (11 professionals across various parts of the criminal justice system, including judges; 1 community member living with a “high” risk assessment score)
- Trainings and Conferences: 7 facilitated learning opportunities (6 MacArthur Foundation sponsored technical support and informational trainings; Safety + Justice Challenge-Racial Equity Cohort Annual Convening, September 27-29, 2022, Atlanta, GA)

- Vera Institute Criminal Justice System Budget Analysis: 3 presentations (*The Cost of the Criminal Legal System in Philadelphia, Part 1*, December 3, 2021; *The Cost of the Criminal Legal System in Philadelphia, Part 2*, December 10, 2021; *Philadelphia: Investing in Race Equity*, February 21, 2022)

Context: Vera Institute of Justice Budget Analysis

“The criminal legal system costs way too much money and it produces extreme equitable outcomes.” (S. van den Heuvel, personal communication, 2/21/22)

According to data from the Mayor’s Budget Office and analyzed by the Vera Institute of Justice (2022), Philadelphia invested \$1.13 billion in public safety in 2022: \$727 million for police, \$219 million for prisons, \$27 million for the Sheriff’s office, \$40 million for the District Attorney’s office, and \$116 million for the First Judicial District (figure 3).

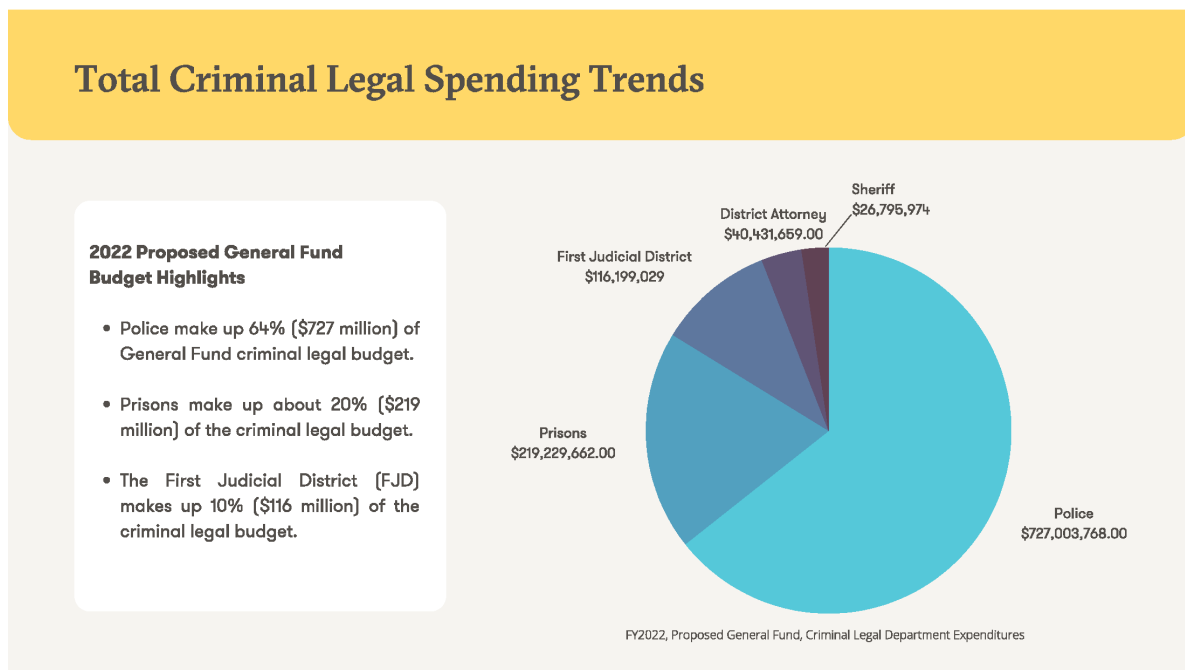


Figure 3: Total Criminal Legal Spending Trends (Vera Institute of Justice, 2021, slide 7)

However, the \$1 billion budget, documented from publicly available data, is only part of the investment picture; some of the data was missing from this analysis. It is unknown how much more the budget would be if all investments such as the costs for other departments (e.g., probation), contractors (e.g., public defenders), and all employee benefits (e.g., pensions) were able to be obtained (Vera Institute of Justice, 2021).

While Philadelphia invests more than \$1 billion annually in public safety, the criminal legal system is plagued by racial inequities. These include racial disparities in the prison population (figure 4) as well as length of stay (figure 5).

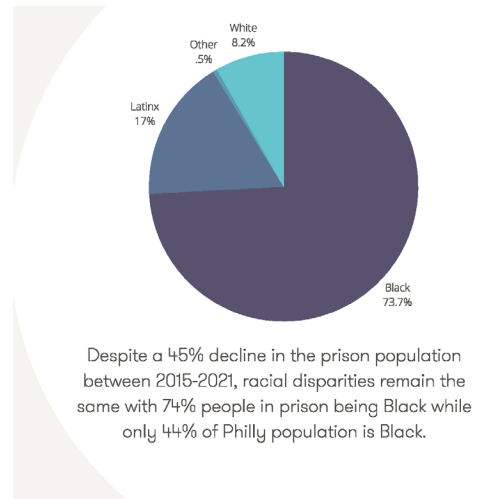


Figure 4: Racial Disparities in Philadelphia Prisons (Vera Institute of Justice, 2022, slide 7)

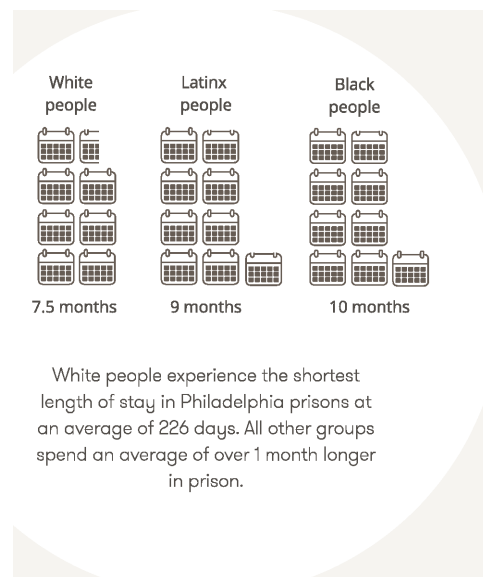


Figure 5: Racial Disparities in Philadelphia Prisons (Vera Institute of Justice, 2022, slide 8)

Findings and Recommendations

The next three sections of this report summarize BARBwire PAR Project learnings into the nature of racial disparities in incarceration rates in Philadelphia and present community-informed recommendations to address them. They represent the wisdom and lived experiences of people who have direct involvement with the Philadelphia criminal legal system. This includes community members, people working in and with the criminal justice system, and Action Team members.

While the findings and recommendations presented here are supported and reinforced by scholarly research, examples of which are included in the “Additional Resources” section at the end of this report, the purpose of this report is to uplift and amplify the narratives of those directly affected by the system. Indeed, the BARBwire PAR Project highlighted the deep connection between established contemporary theories and the lived experiences of participants,

bolstering the significance of centering the voices of those most impacted – and yet historically excluded – from important decision-making processes. The majority of the publicly available references mentioned in this section are those that members of the Action Team found particularly useful as they analyzed the data they had collected.

Section 1: Understanding Racial Disparities

This section summarizes a wide range of factors that contribute to the existing racial disparities in Philadelphia’s criminal legal system. It explores the research questions: Why are Black and Brown communities overrepresented in the Philadelphia jail system? What policies and practices are responsible for the increasingly high rates of incarceration among Black and Brown people (i.e., racial disparities in the jail population) in Philadelphia?

“We know, again, level setting, the criminal legal system has racist roots, which means [we] have to ask questions about race equity.” (S. van den Heuvel, personal communication, 02/21/22)

U.S. History of Racism and Colonialism

Present-day criminal justice policies and practices are undergirded by a centuries-long history of racism and colonialism. A connection exists between mass incarceration of Black and Brown people, racism, and the intentional perpetuation of slavery made possible by an exception in the 13th amendment to the Constitution which permits indentured servitude in cases of punishment for crime (e.g., Coard, 2022; DuVernay, 2016; Spencer, 2022).

Pennsylvania House Bill 2904 introduced in October 2022 proposed an amendment to the PA constitution to explicitly prohibit slavery and involuntary servitude. As of October 26, 2022, action is pending (A Joint Resolution proposing an amendment to the Constitution of the Commonwealth of Pennsylvania, 2022).

Institutional Policies and Practices

“The overall consensus that is visible to me...is that Black and Brown people are victims of Structural Racism. That is when institutions (Education, Red lining, Criminal Justice System, Banks, Laws, Housing) strategically come together with an agenda to put us down and try to keep us down!” (Action Team member)

Politics, structural racism, and government policies have exacerbated poverty and homelessness in Black and Brown communities and increased the likelihood that Black and Brown people will encounter the police. Formal and informal policies, which include redlining, subsequent disinvestment in Black and Brown communities, housing guidelines and gentrification, the criminalization of marijuana, and prison for profit, have disproportionately disadvantaged Black and Brown people.

Prejudicial mindsets, including the association of Black and Brown people with crime, make it likely that when confronted by police, Black and Brown people will be arrested. The infusion of

drugs into Black and Brown communities and the correspondingly high rates of drug addiction, PTSD, and other mental health issues heighten the probability of police involvement and arrest. Similarly, education systems, educational disparities, and the school to prison pipeline reduce opportunities and increase the probability that Black and Brown youth will be involved in the criminal justice system at some point in their lives.

Risk assessment tools and detainers, bench warrants and probation/parole violations were among the criminal justice policies specifically called out as particularly harmful to Black and Brown people. Both will be discussed in more detail later in this report. Briefly, risk assessment tools are viewed as racially biased because the questions they ask (e.g., criminal history) cannot be disentangled from the systemic racism that has shaped people’s experiences and systematically disadvantaged Black and Brown people. In addition, “coded bias” (Kantayya, 2020) comes into play when computer algorithms generate the risk categorizations.

In contrast to the rigidity of risk assessments, there appears to be no standard process for probation/parole violations. It is often unclear why detainers are dropped and by whom; it is similarly unclear why they are lifted, prompting fear, mistrust, and uncertainty among people in the community who may be at risk for violation.

Funding Priorities

Another explanation for the glaring racial disparities in Philadelphia’s criminal justice system goes back to how and when Philadelphia’s criminal legal money is invested (Vera Institute of Justice, 2022). These choices create, maintain, and often exacerbate the disparities. For example, Philadelphia’s current gun violence epidemic has roots in decades of neglect and under funding of schools, mental health services, libraries and rec centers, housing, and other public resources, investments that have been divorced from public safety yet are intricately entwined with it.

Criminal legal funding flows primarily to the police department, District Attorney, the courts, Sheriff’s Office, and prisons (figure 6, lower pathway). Investment generally ends with incarceration. Relatively little, if any, is invested to support Black and Brown people before they enter the system (figure 6, upper pathway) or once they are released back into society.



Figure 6: Lifespan of a Case (Vera Institute of Justice, 2022, slide 5)

“When I look at the map, especially that bottom half, what we know is going on is systemic structure and its infallible focus [on] Black and Brown bodies.” (Action Team member)

The allocation of money across the criminal legal system appears to reinforce criminalization, especially for Black and Brown people. The system is punitive, and with limited money invested in preventative care, pre-entry, non-carceral alternatives, and reentry, there are few supportive options for people.

“It seems the first instinct is to lock people up rather than addressing root causes.” (Action Team member)

For example, programs to address trauma are not among the City’s funding priorities. People are simply locked up, perpetuating the overrepresentation of Black and Brown people in prisons. Once people are released, they are not afforded opportunities to thrive; rather their criminal histories create roadblocks and barriers. Discouraged because of the lack of support, people fall victim to “revolving door syndrome,” (Action Team member) a cycle whereby they go in-and-out of prison.

“My own personal experience is that many times, upon my release, I felt like a fish out of water. I had not been given the resources to support me to thrive in society [and] I was looked down upon because of my criminal history.” (Action Team member)

Mental Health

The Department of Corrections and county jails are “the largest providers of behavioral health services in the Commonwealth” (Behavioral Health Commission, 2022, p. 7).

Jails have become repositories for people struggling with mental illness; people are being jailed rather than receiving the mental health services they need. Alternatives to incarceration that provide effective treatment for mental health issues are limited. Thirteen percent of the prison population (570 people) was identified as having serious mental illness; nearly three-quarters (73%, 416 people) were Black – and 66% were Black men (A. Lyons, personal communication, 11/2/2022).

Rights, Policing, and the Legal System

Community Survey Question: How did you find out you had a detainer, a bench warrant, and/or a probation violation?

Community Member Response: “They just pulled me over while [I was] walking down the street.” (Survey participant)

A lack of education about and awareness of basic rights can mean encounters with the police are more likely result in arrest. Arrests increase the possibility that a person will have a criminal record, which correspondingly increases the probability of arrest and even future detention. Racial profiling, over surveillance of Black and Brown communities, quotas, and police discrimination lead to arrests, while racial bias in cash bail, the weaponization of charges, plea bargaining, and the assessment of court costs and fines can keep people in jail. A lack of communication between institutions (e.g., criminal legal system, communities, schools, people who are arrested/incarcerated) and inadequate legal representation exacerbate these conditions.

Access to a Democratic Process

“Ultimately, achieving equitable outcomes within the Philadelphia’s criminal legal system is not just about shrinking its footprint, fiscally and socially; it’s also about addressing issues of power – within and beyond the system.” (S. van den Heuvel, personal communication, 2/21/22)

Black and Brown people have been – and continue to be – systematically blocked access to the democratic process, making them less likely to be able to elect leaders that will represent their interests and influence the policies that affect them. The more that Black and Brown people are locked up, the less they can/do vote which often strengthens the systems and policies which contribute to their disproportionate involvement in the first place. The passage of legislation and the entrenchment of systems that disadvantage – even harm – Black and Brown people reinforce beliefs that their votes don’t count at all and that they are powerless to change the systems that negatively impact them.

Section 2: Examining Detainers, Bench Warrants and Probation/Parole Violations

This section takes a closer look at one specific way Philadelphia’s criminal justice system disadvantages Black and Brown people. It examines the research question: How do policies and practices related to detainers, bench warrants, and probation/parole violations contribute to the increasingly high rates of incarceration among Black and Brown people?

Fear Factor

Echoing the deliberate policies that have contributed to mass incarceration in general, structural racism, racial profiling, and prison for profit are viewed as endemic throughout all aspects of the criminal justice system. For Black and Brown people, these realities manifest through targeting and repeated human injustice, creating a cycle of fear and desperation. When experience suggests that any contact with the police – even reporting someone else’s criminal act – will lead to being locked up, people learn to distrust the criminal justice system. False allegations/arrests, prior arrests, inability to pay bail, and unrealistic/indiscriminate sentencing further complicate people’s relationships with the system.

Some people express fear of turning themselves in. When people are afraid that an interaction with the criminal justice system might end in physical harm, if not death; when people don't have legal representation; or when they don't feel they can communicate with their lawyers and Probation Officers – or trust they will be treated without bias, actions such as running/absconding can seem necessary. The nature of the criminal justice system, however, deems these actions to be cause for violation and arrest rather than as a means of personal protection that might be addressed in holistic and less punitive ways.

“I have observed that when it comes to bench warrants and detainers, once an individual has some sort of dispute or disagreement with his/her P.O., specifically if there is a ‘hot urine’ involved, that individual may not go back to see their P.O. for fear that he/she may be locked up and that is when absconding generates a detainer and or a new charge. Again...no resources...no solid support.” (Action Team member)

Confusion and Lack of Awareness

Processes and procedures surrounding how and when detainers and violations are issued are not well known within the community. Tightly controlled, difficult to understand information can enable repeated victimization of Black and Brown people by those with power. When people lack knowledge about the criminal legal policies and procedures that can affect them, confusion, fear, and missteps can be natural responses.

An important aspect of the BARBwire PAR Project data collection was to gather to document the detainer/violation processes. Rev. Dr. Michelle Anne Simmons led this work on behalf of the Action Team, working closely with the Defender Association of Philadelphia to create, “Know Your Systems for VOPs,” (Cotter & Goyal, 2022). The violation process is briefly outlined in figure 7.

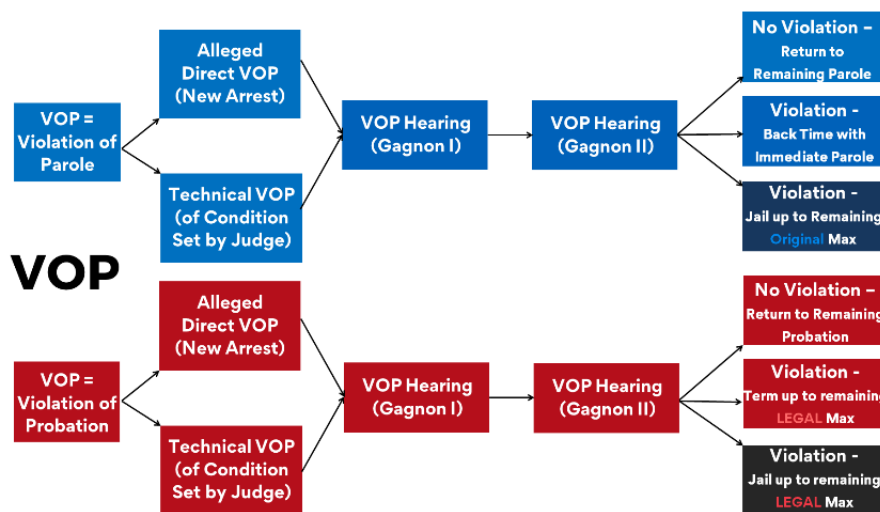


Figure 7: Violations of Probation/Parole (Cotter & Goyal, 2022, slide 5)

Violations can result from conditions set by a judge (technical violation) or a new arrest (alleged direct violation). Regardless of the violation type, each person is entitled to two hearings. The Gagnon I hearing (aka Detainer hearing) is first. Here the judge determines if there is probable cause that the violation occurred and whether the person will be detained pending the Gagnon II hearing.

Public Defenders try to meet with each person one-on-one before the hearings and gather information that might support lifting the detainer. Detainers are not likely to be lifted for serious offenses that include domestic violence, rape/sexual offenses, violence, arson, guns, robbery, aggravated assault, and/or large quantities of drugs.

Probation Officers create a Gagnon I Discovery Report for each person before the Gagnon I hearing. This summary details the person's criminal history and includes the person's assessed risk. All parties, including the District Attorney, utilize this report in decision making. In this way, it appears as if the criminal justice system is regularly using people's life paths, with an emphasis on their criminal histories, to keep them locked up.

Gagnon II hearings are the Public Defender's second chance to get a person home. During these hearings, a determination is made regarding the violation, and the judge decides whether there is enough evidence for revocation.

Risk Assessment

Fear is further compounded by the deepening racial disparities in criminal justice outcomes enabled by risk assessment tools and amplified by multiple levels of bias in decision making. Many of the decisions made within the Philadelphia criminal legal system seem to rely on the risk assessment completed by the Adult Probation and Parole Department (Probation). This assessment was originally designed to help Probation better allocate its limited resources toward those who most needed assistance. It appears use of the tool has evolved, working its way into decision making across Philadelphia's criminal justice system to inform detainer hearings, bail decisions, and more. Expanded utilization of the tool beyond its intended purpose affects Black and Brown people's lives in detrimental ways.

Philadelphia's algorithm assesses the possibility that a person will be arrested for a future violent crime, identifying people as low, medium, and high risk. Each categorization results in different probation/parole requirements. Community members refer to a person's categorization as their "score." Once a person has a score, especially a high score, it can make their lives outside prison much harder, jeopardizing jobs, homes, and families.

"I'm being judged off of my past, not my progress."

LaTonya is one of the many Black and Brown people who, after being released from prison, are evaluated as high risk according to Philadelphia's risk assessment tool. LaTonya's Probation Officer told her that she would likely kill someone or be dead by the time she was 27 years old. Her Probation Officer also told her that his job was to

help her stay alive. She doesn't feel the Probation system supported her in the ways she needed.

"The risk assessment highlights bias; it does not amplify and address needs."

LaTonya experienced the both Philadelphia's risk assessment tool and the criminal justice system as deficit-focused in ways that did not address the challenges she was facing in her life. As a result of the high-risk score assigned to LaTonya by the computer algorithm, she had to report to Probation weekly and regularly comply with other requirements – in spite of the fact she had a steady job and had been recognized more than once for her positive contributions to the community.

Compliance meant LaTonya had to consistently take time off work, threatening her job and the stability of her life. She repeatedly asked if she could get her score lowered. She was told that her score was permanent: "The algorithms could not be adjusted."

"It feels as though the criminal justice system is basing their successes off my failures."

It wasn't until seven years later, when she was working in the Public Defender Office, that LaTonya learned she could petition for Early Termination of Probation, an opportunity available to people who have been compliant with their probation conditions. The Defender Association of Philadelphia assisted her in applying, and her probation was ended.

LaTonya is a fierce advocate for others in similar circumstances. She firmly believes that the criminal justice system and its tools need to be reformed to attend to people's needs not just people's risks, "so we can succeed."

Pretrial risk assessment tools have been repeatedly challenged as discriminatory and prompted varied recommendations for mitigating racial bias in outcomes (Angwin, 2016; Barabas et al., 2019; Freeman & McGilton, 2020; NYCLU, 2020). Indeed, Arnold Ventures (formerly Arnold Foundation, developer of the Public Safety Assessment (PSA) widely used by jurisdictions across the US) acknowledged that risk assessment tools are not singular solutions but rather "one policy option — and the latest chapter in a decades-long, healthy (and important) debate about how we use research to mitigate the bias inherent in human decision-making" (Arnold Ventures, 2019, para 16).

The Action Team was not able to secure a copy of Philadelphia's risk assessment tool. It is deemed proprietary, and details of its inputs are not available to the public. An interview with Dr. Richard Berk, the tool's creator, confirmed it is a computer algorithm. While acknowledging concerns about racial inequity surrounding the Arnold Foundation's PSA, Dr. Berk stated that Philadelphia's tool is not racially biased. He noted, for example, that Philadelphia's algorithm does not consider race or zip code. In addition, unlike the PSA, which is used to determine risk

pretrial, Dr. Berk was explicit that the sole purpose of Philadelphia’s algorithm is to provide Probation with data to inform supervisory decisions:

“The intent has been to make supervision on probation and parole more accurate and more fair. But ultimately, decisions on the nature of supervision are made by ADPP [*sic*] staff, in principle with information from the risk instrument....There is no risk score. The algorithm forecasts whether an offender under supervision will be arrested for a crime of violence, or arrested for a nonviolent crime, or not arrested at all...well more than half of the individuals under supervision are forecasted to not be arrested for any crime while under supervision....I do not know what information is used for arraignment or sentencing decisions.” (R. Berk, personal communication, 9/24/22)

The algorithm is regularly evaluated and is expected to be updated in the next year. While Dr. Berk suggested the increase in guns in Philadelphia substantially changes risk, he “can guarantee that all racial and ethnic groups will be treated alike by the algorithm” (R. Berk, personal communication, 9/24/22).

Action Team members disagree with the assertion that Philadelphia’s algorithm is or can be made racially unbiased so long as it relies on information from criminal histories, such as age at first offense. Bias in criminal history numbers is systemic (Fontanet-Torres, 2022; figure 8). Any tool which asks about prior criminal history, for example, especially during youth – which it appears the Philadelphia tool does – is considered inherently racist, a position supported by numerous professional groups (e.g., NYCLU, 2020).

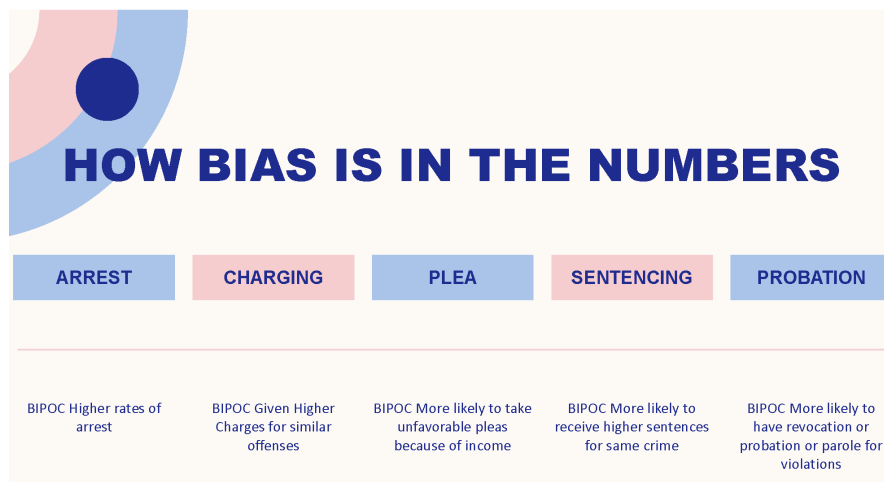


Figure 8: How Bias Is in the Numbers (Fontanet-Torres, 2022, slide 22¹)

Lack of Interpretation and Explanation

English is not necessarily a first language for people facing detainer hearings. Hearings are frequently rolled over (i.e., postponed) because there are not enough interpreters. Even among

¹ Presenter’s references for slide 22 (i.e., BARBwire PAR Report Figure 8) are provided in “Additional Resources: How Bias Is in the Numbers” at the end of this report.

English-speakers, people do not always understand what has happened or what they are being told in their hearings, especially as it relates to sentencing leading to confusion and opening the possibility of non-compliance.

Sentencing

During observations of a Gagnon I (Detainer) hearing, it seemed the Probation Officer, Trial Commissioner, and District Attorney had their minds made up about the outcome of people’s cases before the hearing began. The legal professionals seemed concerned about reprisals for sending people home and having them offend again. However, those people who advocated for themselves during their hearings had a better chance of release.

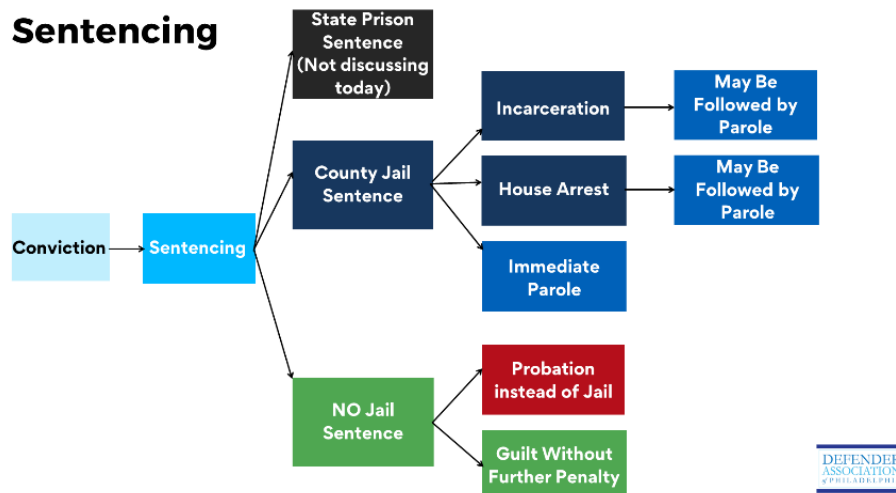


Figure 9: Sentencing (Cotter & Goyal, 2022, slide 4)

The sentencing process can follow different pathways based on multiple variables (figure 9). The law stipulates that if a person is on probation for a crime carrying a minimum-maximum sentence and the person violates probation, their probation can be revoked, and they may be resentenced to the maximum for the original crime. In this scenario, sentences coming out of revocation hearings can be very long and seem disproportionate to the nature of the violations.

Many of the factors that inform whether a person goes home or gets more time are fraught with the potential for bias against Black and Brown people: the seriousness of the charged offense, the Gagnon I Discovery Report including the risk assessment, the extent of agreement (or disagreement) between the District Attorney and Public Defender, whether or not a person can pay bail, and the Trial Commissioner’s discretion. A person’s criminal record, including new crimes, open cases, violations, and detainers; court history (e.g., missed appointments and bench warrants); and substance use can mean more time. However, having no open cases, a consistent reporting history, an address and stable place to live; kicking a drug habit; stable employment; family and community support; and personal advocacy – speaking up in court, telling “your story” – can support release.

Hearing Delays

People who have violated parole or probation, who have had a detainer dropped on them, are entitled by law to speedy disposition at court hearings. There is wide variety in the scheduling of Gagnon I hearings. Because probation summaries must be prepared in advance, Gagnon I hearings in Philadelphia are being delayed. Some people get hearings within 3 days; others can wait as long as 10 days.

Bail

The Trial Commissioner and trial lawyers frequently ask people as part of detainer hearings if they have money to pay bail. The most common bail is now \$100-250K, 10 times more than in 2015 (Vera Institute of Justice Budget Analysis, 2022). The practice of assessing ability to pay bail discriminates against Black and Brown people as these amounts are out of reach for many. As witnessed in court watches and followed up in a conversation with a Trial Commissioner, if people do not have money for bail, the judge may not lift the detainers. Family support offers an exception; strong family support can lead to lower bail or release.

Unconscious Bias

To the extent that people's lives depend on the ways they are represented and the decisions others make about them, they are at risk of being impacted by unconscious bias. Some lawyers are strong advocates for their clients, for example, helping clients find supportive services including places to live and treatment options. Others are not. Similarly, judges have significant discretion and autonomy in the court room. They interpret freely information about the person/case and make their own decisions.

"I...feel like people or systems of power do not see folks as being human. My belief is that they see them as the 'oil' to keep the systems churning!" (Action Team member)

Even well-intentioned people are subject to bias, especially when they are working within a system in which bias is ingrained. Research on implicit bias has shown that "racial disparities are found at virtually every point of criminal justice processing, and...implicit racial bias can manifest...not only in the discretionary decision making of criminal justice system actors...but also in otherwise well-intentioned crime control laws and policies" (Bailey, 2018, p. 2).

The criminal justice system focuses on deficits and punishes people based on them. People's trauma experiences, intervention needs, and personal/family/community strengths are rarely, if ever, considered in criminal proceedings. Professionals working within the system cannot help but be influenced by this pervasive culture and see what the system has "trained" them to see.

Miscommunication and Lack of Transparency: Probation

People often do not understand the terms of their probation/parole, leading to confusion and missteps. Large caseloads, communications breakdowns between people and departments, and fear about what might happen if a person reoffends can reinforce punitive rather than supportive interactions. For example, almost half of the community members with probation and parole

violations surveyed by the Action Team found out they had a violation/detainer/bench warrant after having been arrested.

The risk assessment algorithm is a specific area of concern. Probation maintains complete confidentiality around the specifics of this tool, meaning people do not know what factors are weighed in the decisions that affect their lives. Additionally, once people are assessed, the assessment categorization stays with them indefinitely unless they apply for early termination, yet another process about which people who might be eligible are generally unaware.

In addition, unlike City Departments, Probation and its data are part of the First Judicial District, controlled at the State level, and are not publicly accessible. As a result, the Vera Institute of Justice was unable to procure Probation budgets as part of the Institute’s (2021) budget analysis, contributing to an incomplete picture of criminal legal system funding and fueling distrust of Probation within the community and limiting accountability.

Section 3: Rethinking Philadelphia’s Criminal Justice System

“We agree that there are no easy answers just hard questions, but with one loud [sic] voice, the system is set up to fail Black and Brown and poor people.”
(Action Team member)

This section envisions opportunities for creating a more just, equitable criminal justice system in Philadelphia, one that no longer disadvantages Black and Brown people. It considers the research questions: How can Philadelphia rethink investments in public safety to deliver more equitable outcomes? How can the Philadelphia criminal justice system reduce the overrepresentation of Black and Brown people in jail? What policy changes can be made within the Philadelphia criminal justice system to help keep Black and Brown people out of jail? How might community services play a role in reducing the overrepresentation of Black and Brown people in jail?



Figure 10: BARBwire PAR Action Team, 2022

Analysis of these research questions along with the previously presented data generated eight recommendations (figure 10). Each recommendation is accompanied by a more detailed set of priority actions that outline investment and policy changes to reduce the disparate criminal legal outcomes for Black and Brown people. Priority actions are outlined for the City of Philadelphia, the Justice Partners, Probation, and the community at large.

1. Invest in Racial Equity

Philadelphia spends more than \$1 billion on an extremely inequitable criminal legal system that perpetuates the marginalization of Black and Brown communities. The system disproportionately harms Black and Brown people and is experienced as punitive.

Priority Actions for the City

- Reallocate funding to ensure its criminal legal system equitably serves marginalized communities.
- Review its criminal-legal system funding priorities along the lifespan of a case (i.e., pre-entry to reentry) to document outcomes and disparities, identify what is working and what is not, and define ways to reallocate funding consistent with the findings and recommendations presented in this report.

2. Increase Transparency and Accountability

When the Vera Institute of Justice analyzed the Philadelphia criminal legal system budget, data was obtained from the police department, prisons, First Judicial District (as a whole entity not broken out by department), District Attorney’s office, and Sheriff’s office. Data from important components of the system (e.g., Probation via First Judicial District data) are not publicly available and, therefore, could not be included in the analysis. Lack of transparency limits accountability and prevents the public from being able to review, analyze, provide feedback, and recommend improvements.

Priority Actions for the City

- Urge the City to partner with the First Judicial District to better understand what specific criminal legal department budgets look like related to the services provided to Philadelphians.
- Expand its Safety + Justice Challenge Dashboards, adding other public facing dashboards/data that clearly and explicitly track progress toward reducing disparities in all areas of the criminal legal system, including Probation.
- Initiate a community-informed process of continuous system improvement.

3. Expand Opportunities for Community Education

The criminal justice system does not appear to be designed to be easily understandable or easily influenced. For example, policies related to probation are not shared widely and are, therefore, not known by those to whom they apply. Similarly, many Black and Brown people take plea deals, not understanding all the corollary consequences and believing they have no other options.

Priority Actions for the City

- Increase investments in technology and education to bring greater clarity to the criminal legal system, its processes, and its outcomes, beginning with Probation.
- Partner with the local nonprofits and community groups, including Why Not Prosper, and the Safety + Justice Challenge Community Advisory Committee to facilitate Town Hall meetings and other educational sessions on rights, responsibilities, and processes for people involved with the criminal legal system.

4. Incorporate Holistic Services and Supports

While there are countless opportunities for the City to interrupt existing systems of harm and equitably promote safety and wellbeing, Philadelphia continues to significantly disadvantage Black and Brown people through its continued investment in punitive, control-based strategies (e.g., police, prisons) rather than care-based, holistic ones. Limited criminal legal investment is made in preventative care, pre-entry support, and non-carceral alternatives. Similarly, when people reenter communities after incarceration, it can be challenging to find re-entry supports, and they often face barriers accessing the services that do exist.

Priority Actions for the City

- Adopt a non-punitive, whole-person strategy for investing in the criminal legal system, one that favors rehabilitation and wellness and acknowledges the social determinants of health (<https://health.gov/healthypeople/priority-areas/social-determinants-health>).
- Invest more money in diversionary and pre-entry programming (e.g., Participatory Hubs, Defender Association of Philadelphia’s Pre-Entry Initiative); specific investments might include case management and mental health care, trauma-informed trainings for staff throughout the system, and grants for and greater collaboration with nonprofits, community-based services, and faith-based organizations.
- Fund more evidence-based reentry programming and after-care planning to provide people with practical resources to help them succeed and thrive, including following through with the commitments from the Office of Reentry Partnerships to deepen its relationships with people through 1) holistic pre-release support to those currently incarcerated as they begin the process of reintegration back into the community and 2) implementation of Neighborhood Resource Centers, and 3) embedding of restorative justice within its framework for all re-entry supports.
- Increase RFPs for community-driven programming to support Black and Brown communities before they enter the system (e.g., paid job training) and at all phases in the criminal-legal process (e.g., increasing social services in prisons).
- Hire more interpreters across all publicly facing programs and departments, especially the courtroom and Probation.

5. Mitigate Bias

Two ways to “right the wrongs” that disadvantage Black and Brown people in the criminal legal system are to mitigate bias in the tools used to assess people and in the people who are making decisions about other’s lives.

Priority Actions for the City

- Implement strategies to reduce bias in the risk assessment tool: 1) make sure it does not use proxies for race, is equally accurate for all racial groups, and is reviewed and revised for false positives and over-classification for Black and Brown people; 2) use metrics other than arrests to identify public safety risk (Fontanet-Torres, 2022).
- Implement strategies to reduce bias in people: 1) track and review overrides for disparities; 2) require racial bias trainings for judges, prosecutors, public defender, and correction officers; and 3) change policing practices (Fontanet-Torres, 2022).

6. Cultivate a Culture of Community Care and Engagement

The culture of the criminal legal system is historically patriarchal, authoritative, exclusive, and self-monitoring. Probation provides an example with its proprietary risk assessment tool, inaccessible data, and confusing procedures. The Defender Association of Philadelphia provides the counterpoint with its community-centered culture exemplified by programs like Participatory Hubs and the Reentry Coalition through which providers and others rally around a person for ongoing support.

Priority Actions for the City

- Institutionalize a community-centered, collaborative, and holistic approach to reducing incarceration rates.
- Build a culture of care that incorporates needs assessment with risk assessment for all people involved with the criminal legal system. This might include using Adverse Childhood Experiences (ACE) Survey (Centers for Disease Control and Prevention, 2021) scores to develop non-carceral trauma intervention plans for people, keeping in mind that as currently validated, this assessment does not include environmental stressors such as racism and violence (Starecheski, 2015), which have the potential to require additional and/or more intensive interventions.
- Continue to invest in community-centric services at Probation, building on efforts such as the recent hiring of a Reentry Officer to connection people under supervision with resources they need to be successful.
- Support the longer-term work of revamping the probation model from supervision only to one that centers people’s needs and sets people up for success, using the Defender Association of Philadelphia’s pre-entry, bail navigators, and community-driven reform as exemplars.
- Include community member participation in the development and/or refinement of criminal legal policies – across all departments – to ensure those most directly impacted are part of developing more new solutions.

- Continue to fund the Safety + Justice Challenge Community Advisory Committee beyond the conclusion of the MacArthur grant and encourage more connection between the CAC and the community through education and other opportunities.
- Continue the Criminal Justice Advisory Board and add Safety + Justice Advisory Committee members and other community representatives to the Board to engage those with lived experience in discussions and decision making.

7. Enhance Court Procedures

Court rooms offer another venue for change to eliminate racial disparities and reduce the number of Black and Brown people in the criminal legal system.

Priority Actions for Justice Partners

- Stop asking for bail or about it in Gagnon 1 hearings (District Attorneys and judges).
- Stop weaponizing charges to force pleas and that judges and defense attorneys do more to explain the serious, lifetime consequences of accepting a plea deal (District Attorneys).
- Create a publicly accessible system/tool (e.g., judicial report card, bench card) through which judges regularly track their sentencing decisions/outcomes by race, gender, and other variables.
- Implement regular reviews of court lists by judicial leaders to ensure fidelity of case processing.
- Institute more processes to support community members involved with the courts (e.g., increase communication between representatives of the system and clients/families, train lawyers in nonviolent communication and use of appropriate language, and provide people with the training and supports they need to successfully advocate for themselves).

8. Co-Create a Person-Centric Probation Department

Probation is one pivotal change point. As the liaison between the person accused and the judge, Probation Officers have to opportunity to take a more holistic approach to presenting a person to the court. This means centering their strengths and needs alongside their “risks” through a “whole person resume” when sharing their history with the District Attorney and judge.

Priority Actions for Probation

- Outface its data (e.g., caseloads, outcomes, budgets) so it is easily accessible to the public.
- Make public the details of its risk assessment algorithm.
- Review risk assessment tools for racial bias and allocate money for new algorithms that remove bias.
- Partner with social service professionals to assess a person’s exposure to trauma (e.g., ACE score) and identify intervention points, to represent the whole person

with compassion and empathy so that the accused person’s humanity becomes a fundamental part of the process.

- Involve people with lived experience in reviewing and developing tools that will be used to evaluate them in the criminal-legal process.
- Hold monthly orientation sessions for people on probation/parole and their families, friends, and allies (e.g., how probation/parole works, how to access needed services, as well as when and how to apply for early termination).
- Revise monthly probation/parole check-in forms to include questions aimed at building trusting relationships and promoting rehabilitation and wellness (e.g., Do you have any issues I can support you with? What do you need from me? Are you having any struggles?).
- **Invest in a center that allows people to turn themselves in without the fear of being locked up. This center would prioritize people’s dignity and human experiences and serve as a place of care not punishment. It would connect people with supportive programs and services (e.g., Participatory Hubs, mentoring, Defender Association of Philadelphia) and have access to pro-bono lawyers who would represent these people correctly and compassionately.** This recommendation is the focus of the BARBwire PAR Project Priority Program Pilot Proposal and is presented briefly in final section of this report.

9. Activate Community

The community also has a role to play in reducing disparities in the criminal legal system.

Priority Actions for the Community

- Engage in community education opportunities.
- Take action and share experiences to bring greater equity to the criminal legal system; this might include joining the Safety + Justice Community Advisory Council, participating in Participatory Hubs, asking more questions about their own situations, and learning how to advocate for themselves in court and throughout interactions with the system.

Priority Program: Proposed Pilot

The BARBwire PAR Project highlighted detainers, bench warrants, and probation/parole violations as the area for initial investment to reduce the number of Black and Brown people in jail. This section provides an overview of the Detainer Clinic proposed as the initial pilot project to be funded in Year 2 of the MacArthur Foundation Safety + Justice Challenge Racial Equity Cohort. This project is a first step in answering the research question: How can some of the Philadelphia’s criminal justice funds be reallocated to better serve Black and Brown communities? Additional details about this project will be presented in a separate proposal.

The Defender Association of Philadelphia will provide legal services that support Why Not Prosper’s efforts to reduce racial disparities in the county jail population by shrinking the number

of people under probation supervision and connecting people with the supports they need to successfully navigate supervision.

Just over 50% of the people incarcerated in the Philadelphia County jail have a detainer; 30% have at least one Philadelphia detainer (City of Philadelphia Office of Criminal Justice, 2023). The majority of the detainees lodged are for violations of probation. These violations may range from technical violations, things like not following the rules of probation, to convictions for new crimes committed while on probation supervision. Recent reports estimate that on any given day 5% of the county jail population are incarcerated due to an alleged technical violation.

This pilot project seeks to help 1) reduce technical violations of probation by connecting probationers with supports that will help them succeed on probation and 2) reduce the absconder population by referring people who are not reporting to probation and may have a warrant issued for their arrest to the Defender Association of Philadelphia for help in getting back on track. In addition, this project will refer people who are doing well on probation to Defender Association of Philadelphia so their cases can be reviewed, and they can receive advice as to whether they may be eligible for early termination of probation.

Why Not Prosper will provide information to the community about the services the Defender can provide to people currently on probation. Why Not Prosper will serve as a trusted messenger in the community, educate the community about the services the Defender already provides, and provide information to the Defender Association of Philadelphia about what the people served need.

References

Angwin, J., Larson, J., Mattu, S., & Kirchner, L. (2016, May 23). *Machine bias: There's software used across the country to predict future criminals. And it's biased against Blacks*. ProPublica. <https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing>

Arnold Ventures. (2019, September 10). *James Cadogan: The promise of public policy: Seizing the moment in pretrial justice*. <https://www.arnoldventures.org/stories/james-cadogan-the-promise-of-public-policy-seizing-the-moment-in-pretrial-justice>

Barabas, C., Dinakar, K., & Doyle, C. (2019, June 17). *Technical flaws of pretrial risk assessments raise grave concerns*. MIT Media Lab. <https://www.media.mit.edu/posts/algorithmic-risk-assessment/>

Behavioral Health Commission [Pennsylvania]. (2022, October). *Recommendations to the Pennsylvania General Assembly [Special Report]*. https://www.dhs.pa.gov/Services/Mental-Health-In-PA/Documents/Behavioral-Health-Commission-Report_October2022.pdf

Centers for Disease Control and Prevention. (2021, April 2). *Adverse Childhood Experiences (ACEs)*. <https://www.cdc.gov/violenceprevention/aces/index.html>

BARBwire PAR Project Final Report

Center for Disease Control and Prevention. (2022, April 6). *ACEs questionnaires*. Resources, Section 5. <https://www.cdc.gov/violenceprevention/aces/resources.html>

City of Philadelphia Office of Criminal Justice. (2022, November 28). *Philadelphia prison population report, July 2015-October 2022*. <https://www.phila.gov/media/20221128154936/Full-Public-Prison-Report-October-2022.pdf>

City of Philadelphia Office of Criminal Justice (2023, January 19). *Philadelphia prison population piktchart report, December 2022*. <https://www.phila.gov/media/20230119135140/December-2022-Public-Piktchart-Report.pdf>

Coard, M. (2022, December 6). The 13th amendment didn't end slavery – bit it did fuel mass incarceration. *Philadelphia Capital-Star*. <https://www.penncapital-star.com/commentary/the-13th-amendment-didnt-end-slavery-but-it-did-fuel-mass-incarceration-michael-coard/>

Cotter, B., & Goyal K. (2022, July). *Know your systems for VOPs* [PowerPoint slides]. Defender Association of Philadelphia.

DuVernay, A. (Director). (2016). *13th* [Film]. Netflix, Forward Movement, Kandoo Films.

Fontanet-Torres, A. (2022, September 28-30). *Risk tools and race: A deep dive on racial equity and risk assessment* [Conference presentation]. SJC Network Meeting, Atlanta, GA, United States.

Freeman, K. R., & McGlinton, M. (2020, August 3). *The problem is not the criminal justice risk assessment tool: It's systemic racism*. Urban Wire: Urban Institute. <https://www.urban.org/urban-wire/problem-not-criminal-justice-risk-assessment-tool-its-systemic-racism>

Joint Resolution proposing an amendment to the Constitution of the Commonwealth of Pennsylvania, providing for prohibition of slavery and involuntary servitude, HB 2904, Pennsylvania General Assembly (2022). <https://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sYear=2021&sInd=0&body=H&type=B&bn=2904>

Kantayya, S. (Director). (2020). *Coded Bias* [Film]. 7th Empire Media, Chicken & Egg Pictures, Ford Foundation – Just Films.

Maryfield, B. (2018, December). *Implicit racial bias*. Justice Research and Statistics Association. <https://www.jrsa.org/pubs/factsheets/jrsa-factsheet-implicit-racial-bias.pdf>

Melamed, S. (2022, June 8). Incarceration: Inventing solitary. *The Philadelphia Inquirer*. <https://www.inquirer.com/news/inq2/more-perfect-union-philadelphia-solitary-prison-population-incarceration-20220608.html>

NYCLU. (2020, March 9). *The problems with pretrial risk assessment tools*. <https://www.nyclu.org/en/publications/problems-pretrial-risk-assessment-tools>

Sabol, W. J., & Johnson, T.L. (2022, September). *Justice system disparities: Black-white national imprisonment Trends, 2020-2022*. Council on Criminal Justice. <https://counciloncj.foleon.com/reports/racial-disparities/national-trends>

Safety + Justice Challenge. (2022, Jan 19). *Deepening efforts to eliminate racial and ethnic inequities in justice system* [Press release]. <https://safetyandjusticechallenge.org/about/press-room/deepening-efforts-to-eliminate-racial-and-ethnic-inequities-in-justice-system/>

Spencer, S. (2022, June 17). *Emancipation on the ballot: Why slavery is still legal in America – and how voters can take action*. NAACP Legal Defense Fund. <https://www.naacpldf.org/13th-amendment-emancipation/>

Starecheski, L. (2015, March 2). *What shapes health: Take the ACE quiz – and learn what it does and doesn't mean*. [Radio transcript.] NPR. <http://www.npr.org/sections/health-shots/2015/03/02/387007941/take-the-ace-quiz-and-learn-what-it-does-and-doesnt-mean>

Vera Institute of Justice. (2021, December 4). *The cost of the criminal legal system in Philadelphia* [Presentation to BARBwire PAR Action and Administrative Teams, December 10, 2021].

Vera Institute of Justice. (2022, February 20). *Philadelphia: Investing in race equity* [Presentation to BARBwire PAR Action and Administrative Teams, February 21, 2022].

Additional Resources

Alexander, M. (2012). *The new Jim Crow: Mass incarceration in the age of colorblindness*. The New Press.

Bucklen, K. B., Sheets, M., Bohm, C., Bell, N., Campbell, J., Flaherty, R., & Wiede, K. V. (2022). *Recidivism: 2022 report*. Pennsylvania Department of Corrections. <https://www.cor.pa.gov/About%20Us/Statistics/Documents/Reports/Recidivism%202022%20Report.pdf>

Carson, E. A. (2021, December). *Prisoners in 2020 – Statistical tables*. U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. <https://bjs.ojp.gov/content/pub/pdf/p20st.pdf>

City of Philadelphia Office of Criminal Justice. (nd). Philadelphia prison population snapshot reports. <https://www.phila.gov/documents/philadelphia-jail-population-snapshot-reports/>

Department of Justice. (2013, August). *Smart on crime: Reforming the criminal justice system for the 21st century*. <https://www.justice.gov/sites/default/files/ag/legacy/2013/08/12/smart-on-crime.pdf>

Hasbrouck, B. (2020). Abolishing racist policing with the Thirteenth Amendment. *UCLA Law Review*, 67, 1108-1129. <https://scholarlycommons.law.wlu.edu/cgi/viewcontent.cgi?article=1631&context=wlufac>

Henderson, W. F. (2019, December 19). Probation detainees in Philadelphia: A due process dud? *Drexel Law Review*, 12, 129-169. <https://drexel.edu/~media/Files/law/law%20review/v12-1/Henderson%2012%20Drexel%20L%20Rev%20129.ashx>

Henning, K. (2021). *The rage of innocence: How American criminalizes Black youth*. Pantheon Books.

Hinton, E., & Cook, D. (2021). The mass criminalization of Black Americans: A historical overview. *Annual Review of Criminology*, 4, 261-286. <https://www.annualreviews.org/doi/pdf/10.1146/annurev-criminol-060520-033306>

Hinton, E., Henderson, L., & Reed, C. (2018, May). *An unjust burden: The disparate treatment of Black Americans in the criminal justice system*. Vera Institute of Justice. <https://www.vera.org/publications/for-the-record-unjust-burden>

Hu, C., KiDeuk, K., & Mohr, E. (2017). *National scan of policy and practice in risk assessment* [Policy brief number 2017-01]. The Risk Assessment Clearinghouse. <https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/pb-scan-of-practice.pdf>

Hunt-Ehrlich, M. (Director). (2022). *The Command Center to Bring Women Home* [Film]. Life Beyond LLC, Independent Television Service. <https://www.pbs.org/independentlens/documentaries/the-command-center-to-bring-women-home/>

Jurman, D. (2020, July). *Trauma-informed PA: A plan to make Pennsylvania a trauma-informed, healing centered state*. PA Office of the Governor, Office of Advocacy & Reform. <https://www.governor.pa.gov/wp-content/uploads/2021/10/Trauma-Informed-PA-Plan-Final.pdf>

Kennedy, S., Blair, T. B., & Wosje, R. (2022, September). *Promoting pretrial success: A new model for pretrial supervision*. National Institute of Corrections. <https://s3.amazonaws.com/static.nicic.gov/Library/033628.pdf>

Lopez, G. (2022, October 31). The Morning: More equitable justice. *The New York Times*. <https://www.nytimes.com/2022/10/31/briefing/prison-race-brazil-election.html>

Mackenzie, D. L. (2001, July). *Sentencing and corrections in the 21st Century: Setting the stage for the future*. [Online manuscript.] Department of Criminology and Criminal Justice, University

of Maryland. <https://www.ojp.gov/ncjrs/virtual-library/abstracts/sentencing-and-corrections-21st-century-setting-stage-future>

Matei, A., Robin, L., Freeman, K. R., & Courtney, L. (2022, November). *An exploration of prosecutorial discretion in plea bargaining in Philadelphia*. Safety + Justice Challenge & Urban Institute. <https://www.urban.org/research/publication/exploration-prosecutorial-discretion-plea-bargaining-philadelphia>

Melamed, S. (2019, April 29). In Philly, your race predicts whether you'll be locked up or go free until trial, study says. *The Philadelphia Inquirer*. <https://www.inquirer.com/news/philly-money-bail-criminal-justice-community-bail-fund-20190429.html>

Melamed, S., & Purcell, D. (2019, October 24). The probation trap. *The Philadelphia Inquirer*. <https://www.inquirer.com/news/inq/probation-parole-pennsylvania-philadelphia-criminal-justice-system-20191024.html>

Melamed, S., Purcell, D., & Williams, C. A. (2019, December 27). 'Everyone is detained' How probation detainers can keep people locked up indefinitely – even when they haven't committed a crime. *The Philadelphia Inquirer*. <https://www.inquirer.com/news/inq/probation-parole-pennsylvania-philadelphia-detainer-criminal-justice-system-20191227.html>

Nadolny, T. L. (2017, September 21). How computers are predicting crime – and potentially impacting your future. *The Philadelphia Inquirer*. <https://www.inquirer.com/philly/news/crime/risk-assessment-tool-criminal-justice-reform-20170921.html>

Rene, W. (Director). (2020). *Wide Open* [Film]. People's Paper Co-Op, Let's Get Free. <https://vimeo.com/478310229>

Rhynhart, R. (2022, August). *Data release: FY23 anti-violence budget*. City of Philadelphia, Office of the Controller. <https://controller.phila.gov/philadelphia-audits/fy23-anti-violence-budget/#/>

United Nations Office of the High Commissioner for Human Rights. (2022, May 18). "Addressing and responding to racial discrimination in the criminal justice system" [Statement at High Level Side Event – Commission on Crime Prevention and Criminal Justice]. <https://www.ohchr.org/en/statements/2022/05/addressing-and-responding-racial-discrimination-criminal-justice-system>

Vera Institute for Justice. (nd). <https://www.vera.org/>

Wacquant, L. (2001). Deadly symbiosis: When ghetto and prison meet and mesh. *Punishment & Society*, 3(1), 95-134. https://sites.middlebury.edu/individualandthesociety/files/2010/09/Wacquant_Deadly_Symbiosis_copy.pdf

Additional Resources: How Bias Is in the Numbers (Figure 8)

Arrest

Hetey, R. C., & Eberhardt, J. L. (2018). The numbers don't speak for themselves: Racial disparities and the persistence of inequities in the criminal justice system. *Current Directions in Psychological Science*, 27(3), 183-187. <https://doi.org/10.1177/0963721418763931>

Jahn, J. L., Simes, J. T., Cowger, T. L., & Davis, B. A. (2022). Racial disparities in neighborhood arrest rates during the COVID-19 pandemic. *Journal of Urban Health*, 99(1), 67-76. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8751464/>

Nembhard, S., & Robin, L. (2021, August). *Racial and ethnic disparities throughout the criminal legal system: A result of racist policies and discretionary practices*. Urban Institute. <https://www.urban.org/sites/default/files/publication/104687/racial-and-ethnic-disparities-throughout-the-criminal-legal-system.pdf>

Redbird, B., & Albrecht, K. (2020, June 18). *Racial disparity in arrests increased as crime rates declined* (WP-20-28). Northwestern Institute for Policy Research. <https://www.ipr.northwestern.edu/documents/working-papers/2020/wp-20-28.pdf>

The Sentencing Project. (2018, April 19). *Report to the United Nations on the racial disparities in the US criminal justice system* [Research Report]. <https://www.sentencingproject.org/reports/report-to-the-united-nations-on-racial-disparities-in-the-u-s-criminal-justice-system/>

Charging and Plea Bargaining

Berdej3, C. (2018). Criminalizing race: Racial disparities in plea bargaining. *Boston College Law Review*, 59(4), 1187-1250. <https://storage.googleapis.com/jnl-bcls-j-bclr-files/journals/1/articles/377/63aa764166b04.pdf>

Devers, L. (2011, January 14). *Plea and charge bargaining: Research summary*. Bureau of Justice Assistance, US Department of Justice. <https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/PleaBargainingResearchSummary.pdf>

Mizel, M. L. (2018). *A plea for justice: Racial bias in pretrial decision making* [Doctoral dissertation, UCLA]. University of California Open Access Repository. https://escholarship.org/content/qt7dg565rr/qt7dg565rr_noSplash_adeea7047d87f44da89b229c71274933.pdf

Nembhard, S., & Robin, L. (2021, August). *Racial and ethnic disparities throughout the criminal legal system: A result of racist policies and discretionary practices*. Urban Institute. <https://www.urban.org/sites/default/files/publication/104687/racial-and-ethnic-disparities-throughout-the-criminal-legal-system.pdf>

BARBwire PAR Project Final Report

The Sentencing Project. (2018, April 19). *Report to the United Nations on the racial disparities in the US criminal justice system* [Research Report].

<https://www.sentencingproject.org/reports/report-to-the-united-nations-on-racial-disparities-in-the-u-s-criminal-justice-system/>

Starr, S. B., & Rehavi, M. M. (2013). Mandatory sentencing and racial disparity: Assessing the role of prosecutors and the effects of *Booker*. *Yale Law Journal*, 123(2), 2-80.

https://www.yalelawjournal.org/pdf/1206_ecd3dkoj.pdf

Sentencing

ACLU & The Sentencing Project. (2022, July 14). Shadow report to the United Nations on racial disparities in sentencing in the United States [Policy Brief].

<https://www.sentencingproject.org/policy-brief/shadow-report-to-the-united-nations-on-racial-disparities-in-sentencing-in-the-united-states/>

Burch, T. (2015). Skin color and the criminal justice system: Beyond Black-White disparities in sentencing. *Journal of Empirical Legal Studies*, 12(3), 395-420.

<https://doi.org/10.1111/jels.12077>

Mitchell, O., & MacKenzie, D. L. (2004). *The relationship between race, ethnicity, and sentencing outcomes: A meta-analysis of sentencing research* [Research summary submitted to U. S. Department of Justice]. <https://www.ojp.gov/pdffiles1/nij/grants/208129.pdf>

Rehavi, M. M., & Starr, S. B. (2014). Racial disparity in federal criminal sentences. *Journal of Political Economy*, 122(6), 1320-1354. <https://doi.org/10.1086/677255>

<https://repository.law.umich.edu/articles/1414/>

The Sentencing Project. (2018, April 19). *Report to the United Nations on the racial disparities in the US criminal justice system* [Research Report].

<https://www.sentencingproject.org/reports/report-to-the-united-nations-on-racial-disparities-in-the-u-s-criminal-justice-system/>

United States Sentencing Commission. (2017, November). *Demographic differences in sentencing: An update to the 2012 Booker Report*.

https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171114_Demographics.pdf

United States Sentencing Commission. (2018, March). *Mandatory minimum penalties for firearm offenses in the federal criminal justice system*.

https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2018/20180315_Firearms-Mand-Min.pdf

Probation/Parole

Bradner, K., & Schiraldi, V. (2020, March). *Racial inequities in New York Parole supervision*. Columbia University Justice Lab.

<https://justicelab.columbia.edu/sites/default/files/content/NY%20Parole%20Racial%20Inequities.pdf>

Janetta, J., Breaux, J., Ho, H., & Porter, J. (2014, April). *Examining racial and ethnic disparities in probation revocation: Summary findings and implications from a multisite study*. Urban Institute. <https://www.urban.org/sites/default/files/publication/22746/413174-Examining-Racial-and-Ethnic-Disparities-in-Probation-Revocation.PDF>

Nembhard, S., & Robin, L. (2021, August). *Racial and ethnic disparities throughout the criminal legal system: A result of racist policies and discretionary practices*. Urban Institute. <https://www.urban.org/sites/default/files/publication/104687/racial-and-ethnic-disparities-throughout-the-criminal-legal-system.pdf>

The Sentencing Project. (2018, April 19). *Report to the United Nations on the racial disparities in the US criminal justice system* [Research Report]. <https://www.sentencingproject.org/reports/report-to-the-united-nations-on-racial-disparities-in-the-u-s-criminal-justice-system/>

Disparities Present at All Points

Balko, R. (2020, June 10). There's overwhelming evidence that the criminal justice system is racist. Here's the proof. *Washington Post*.

<https://www.washingtonpost.com/graphics/2020/opinions/systemic-racism-police-evidence-criminal-justice-system/#Prosecutors>

Brennan Center for Justice and the National Institute on Law and Equity. (2010). *Racial disparities in federal prosecutions*. Brennan Center for Justice at New York University School of Law. https://www.brennancenter.org/sites/default/files/2019-08/Report_Racial-Disparities-Federal-Prosecutions.pdf

Mizel, M. L. (2018). *A plea for justice: Racial bias in pretrial decision making* [Doctoral dissertation, UCLA]. University of California Open Access Repository. https://escholarship.org/content/qt7dg565rr/qt7dg565rr_noSplash_adeea7047d87f44da89b229c71274933.pdf

Monk, E. P. (2018). The color of punishment: African Americans, skin tone, and the criminal justice system. *Ethnic and Racial Studies*, 42(10), 1593-1612. <https://doi.org/10.1080/01419870.2018.1508736>

Nembhard, S., & Robin, L. (2021, August). *Racial and ethnic disparities throughout the criminal legal system: A result of racist policies and discretionary practices*. Urban Institute. <https://www.urban.org/sites/default/files/publication/104687/racial-and-ethnic-disparities-throughout-the-criminal-legal-system.pdf>