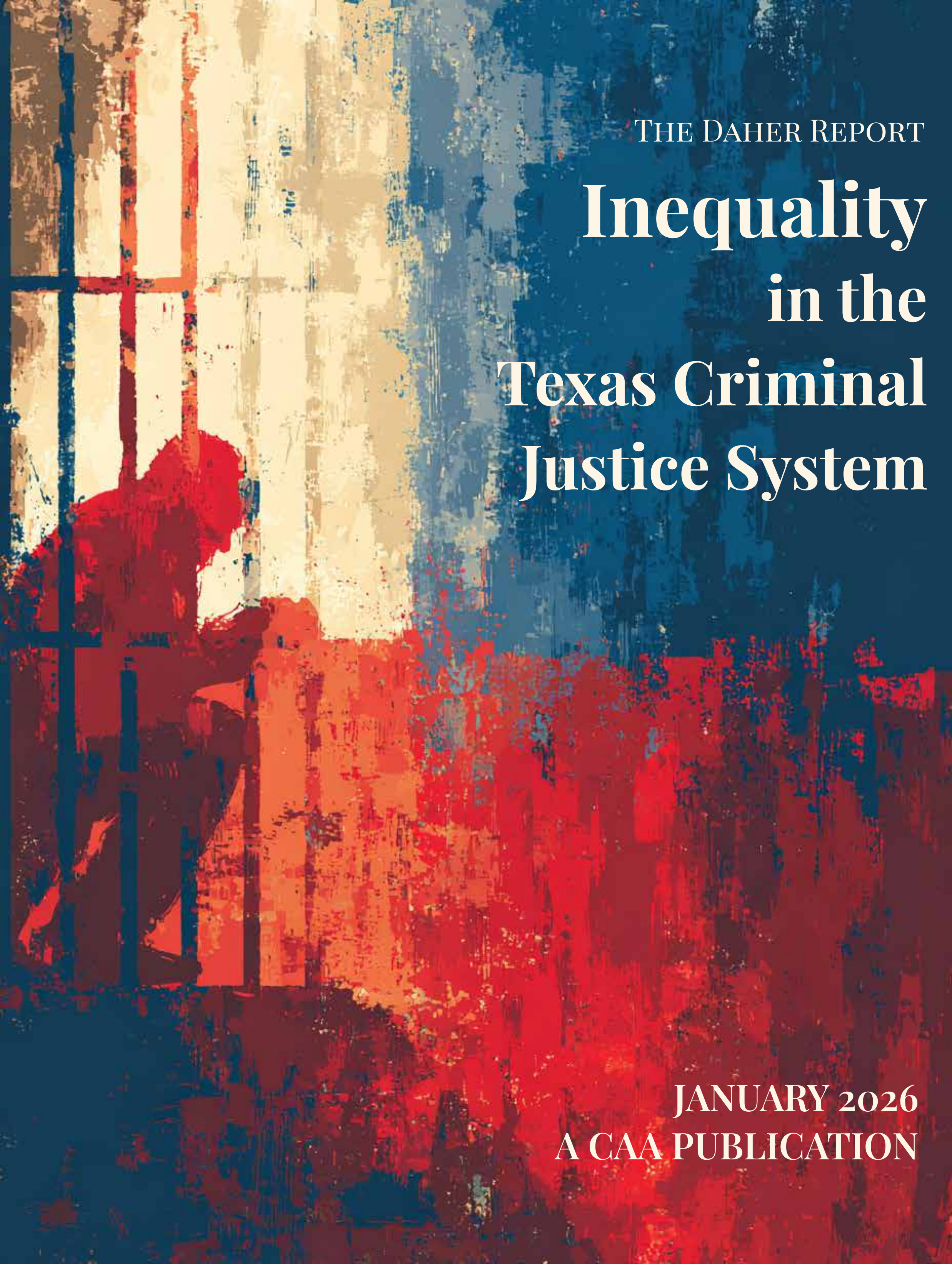


The background is an abstract composition of thick, expressive brushstrokes in red, yellow, and blue. On the left side, there is a dark silhouette of a person standing behind vertical bars, suggesting incarceration. The overall mood is somber and critical.

THE DAHER REPORT

Inequality in the Texas Criminal Justice System

JANUARY 2026
A CAA PUBLICATION

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Author's Note

The numbers in this report represent more than statistics. Behind every data point is a person, a family, a community bearing the weight of a system that does not treat all Texans equally.

When a Black Texan is 3.3 times more likely to be incarcerated than a white Texan, when 95% of recent death sentences in Harris County have been imposed on people of color, when nearly half a million citizens cannot vote because of felony convictions that fall disproportionately on Black and brown communities, we are not describing isolated failures. We are documenting a pattern.

This report was compiled with the conviction that transparency is the first step toward accountability. The disparities documented here are not secrets; they exist in government databases, academic studies, and court records. Yet they persist, year after year, because awareness alone does not produce change.

Texas prides itself on justice. The data in this report challenges us to ask whether that pride is warranted for all Texans, or only some. The answer should trouble every citizen who believes that equal protection under the law is more than a constitutional phrase.

We offer this report not as an indictment, but as an invitation: to examine the evidence, to acknowledge the problem, and to join the work of building a criminal justice system that lives up to its name.

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About This Report

Purpose and Scope

This report provides a comprehensive overview of racial disparities in the Texas criminal justice system, drawing on the most current data available from government agencies, academic research institutions, and advocacy organizations. It examines disparities across the full spectrum of criminal justice involvement, from initial police contact through incarceration and post-conviction consequences.

Methodology

The data presented in this report was gathered through systematic review of:

- **Government sources:** Texas Department of Criminal Justice (TDCJ), Houston Police Department, U.S. Sentencing Commission, and other official agencies
- **Research institutions:** Council on Criminal Justice, Prison Policy Initiative, The Sentencing Project, and peer-reviewed academic studies
- **Investigative reports:** Texas Defender Service, ACLU of Texas, Grassroots Leadership, and other advocacy organizations conducting original research
- **News sources:** Texas Tribune, Texas Observer, and other journalism outlets reporting on criminal justice issues

All statistics are cited to their original sources, with URLs provided for verification. Where multiple sources report similar findings, we have cited the most authoritative or most recent source.

Geographic Focus

While this report focuses on Texas, national data is included where it provides important context or where Texas-specific data is unavailable. County-level analysis is provided for Harris, Dallas, and Tarrant counties where detailed data exists.

Timeframe

Data in this report spans from 2005 to 2025, with emphasis on the most recent available statistics (2023-2025). Historical data is included to illustrate trends over time.

Limitations

This report relies on publicly available data, which may undercount certain disparities due to incomplete reporting. Some jurisdictions do not collect or publish race-disaggregated data. Additionally, "race" as a category in criminal justice data often conflates ethnicity and race, particularly for Hispanic/Latino individuals who may be counted differently across datasets.

Related Resources

For readers seeking additional information, we recommend:

- The Sentencing Project's state-by-state analysis of incarceration disparities
- Prison Policy Initiative's Texas state profile
- Council on Criminal Justice's racial disparities dashboard
- Texas Defender Service's reports on capital punishment

Contact

For questions about this report, requests for additional data, or to report corrections, please contact Criminal Appeals Advocates PLLC at (737) 338-3233.

Executive Summary

Texas operates one of the largest criminal justice systems in the world, incarcerating more people than most independent nations. The data compiled in this report reveals that this system does not treat all Texans equally. At every stage of the criminal justice process, from the initial police encounter through sentencing, incarceration, and the restoration of civil rights, Black Texans experience systematically different outcomes than white Texans. These disparities cannot be explained by differences in criminal behavior; they reflect how the system responds to behavior based on race.

The Scale of Disparity

The evidence is stark and consistent across every measure examined:

- **Incarceration:** Black Texans are incarcerated at **3.3 times** the rate of white Texans. They comprise 33% of the prison population while representing only 13% of state residents.
- **Policing:** Black drivers in Houston are arrested following traffic stops at nearly **double the rate** of white drivers (4.0% vs. 2.2%), yet searches of white drivers yield contraband more frequently.
- **Drug Enforcement:** Black Texans are **2.6 times more likely** to be arrested for marijuana possession despite similar usage rates across racial groups. Texas leads the nation in marijuana arrests.
- **Pretrial Detention:** Black defendants receive bail amounts approximately **\$10,000 higher** than white defendants charged with similar offenses. The resulting wealth-based detention system keeps legally innocent people jailed simply because they cannot pay.
- **Sentencing:** Federal data shows Black males receive sentences **13.4% longer** than white males for comparable offenses, while prosecutors file mandatory minimum charges **65% more often** against Black defendants.
- **Death Penalty:** Black individuals comprise **47.6%** of Texas death row despite being 13% of the population. In Harris County, **95% of recent death sentences** have been imposed on people of color.
- **Juvenile Justice:** Black youth are **5.6 times as likely** as white youth to be placed in juvenile facilities, an all-time high disparity.
- **Voting Rights:** Over **479,000 Texans** cannot vote due to felony convictions, with Black Texans **2.5 times more likely** to be disenfranchised.

What This Report Provides

This report is organized in three parts. **Part I** documents the disparities with data from government agencies, academic research, and investigative reports, examining incarceration rates, policing practices, drug enforcement, pretrial detention, sentencing, the death penalty, juvenile justice, felony disenfranchisement, and recent developments. **Part II** analyzes the legal tools currently available to challenge these disparities, including constitutional protections, federal civil rights statutes, Texas state law remedies, and litigation strategies. **Part II** also proposes comprehensive policy reforms across twelve areas: bail and pretrial detention, policing, drug policy, sentencing, the death penalty, juvenile justice, voting rights restoration, prosecutorial accountability, data transparency, constitutional amendments, and implementation frameworks.

Legal Tools for Change

The disparities documented here are not merely moral failures; many constitute violations of existing legal protections. The Fourteenth Amendment's Equal Protection Clause, the Eighth Amendment's prohibition on excessive bail, and the Fourth Amendment's protections against unreasonable searches all provide bases for challenging discriminatory practices. Federal civil rights statutes, including 42 U.S.C. § 1983 and Title VI of the Civil Rights Act, offer causes of action against officials and agencies engaged in discrimination. Texas state law, including the Texas Constitution and the Texas Racial Profiling Law, provides additional remedies. Landmark cases like *ODonnell v. Harris County* demonstrate that litigation can compel systemic reform when constitutional rights are violated.

A Path Forward

The reforms proposed in this report draw directly from the evidence presented and from successful models in other jurisdictions. New Jersey's bail reform reduced pretrial jail populations by 44% without increasing crime. California's Proposition 47 narrowed the Black-white incarceration gap by 36%. Virginia abolished the death penalty in 2021, explicitly citing its racially disparate application. Illinois implemented automatic expungement of marijuana records, processing 800,000 records without requiring individuals to petition courts. These examples prove that meaningful change is achievable.

The proposed reforms address each stage where disparities enter the system: restricting pretextual traffic stops that lead to discriminatory searches, mandating citation in lieu of arrest for minor offenses, eliminating wealth-based pretrial detention, reducing prosecutorial discretion in charging

decisions, reforming sentencing guidelines, imposing a moratorium on executions pending study of racial bias, expanding juvenile diversion programs, restoring voting rights upon release from incarceration, and establishing comprehensive data collection to monitor progress.

The Stakes

The human cost of these disparities extends far beyond statistics. Behind every data point is a person, a family, a community bearing the weight of unequal treatment. When Black Texans are incarcerated at more than three times the rate of white Texans, families are separated, children grow up without parents, communities lose wage earners and civic participants, and the cycle of disadvantage perpetuates itself across generations. When nearly half a million Texans cannot vote because of felony convictions that fall disproportionately on communities of color, the democratic process itself is compromised.

Texas has the resources, the legal framework, and the reform models to address these disparities. What remains is the political will to act. This report provides the evidence base for that action: documenting the problem, identifying available remedies, and proposing specific reforms. The question is whether Texas will choose to build a criminal justice system that provides equal protection for all its residents, or continue policies that treat citizens differently based on the color of their skin.

1. Incarceration Rates

Mass incarceration defines the Texas criminal justice system. The state locks up more people than most countries, and the burden of this imprisonment falls disproportionately on Black Texans. Understanding these numbers requires examining not just who is incarcerated, but what incarceration means for individuals, families, and communities.

Overall Incarceration

Texas has an incarceration rate of 751 per 100,000 residents, locking up a higher percentage of its people than any independent democratic country on earth.

Source: Prison Policy Initiative - Texas Profile

To put this figure in perspective, the incarceration rate of Texas exceeds that of authoritarian nations frequently criticized for human rights abuses. If Texas were an independent country, it would rank among the world's most prolific jailers. This distinction reflects policy choices, not crime rates. States with similar demographics and crime statistics incarcerate far fewer people per capita, demonstrating that Texas's approach represents a deliberate commitment to punishment over alternative responses to crime.

The human cost of this incarceration extends far beyond those behind bars. Research consistently shows that imprisonment destabilizes families, reduces lifetime earnings, damages physical and mental health, and disrupts communities. Children of incarcerated parents face elevated risks of poverty, behavioral problems, and their own future incarceration. When Texas chooses to incarcerate at these rates, it imposes these costs on hundreds of thousands of families, and those costs fall disproportionately on Black families.

Racial Disparities in Incarceration

Black people in Texas are incarcerated at a rate **3.3 times higher** than white people. This disparity persists after controlling for factors that might explain differential incarceration, suggesting that race itself plays a role in who goes to prison and who does not.

Source: Prison Policy Initiative - Texas Profile

The mathematics of this disparity merit careful attention. Black people constitute 13% of Texas state residents but comprise **27% of people in jail** and **33% of people in prison**. If Black Texans were incarcerated at the same rate as white Texans, tens of thousands fewer Black people would be behind bars. The difference represents not an inevitable response to crime, but a choice about how the criminal justice system operates.

Source: Council on Criminal Justice - Texas Report

The distinction between jail and prison populations reveals important dynamics. Jails hold people awaiting trial, serving short sentences, or detained for other reasons. Prisons hold those convicted and sentenced to longer terms. That Black Texans are overrepresented in both settings, but even more so in prisons, suggests that disparities compound at each stage of the process. Initial disparities in arrest lead to disparities in charging, which lead to disparities in conviction, which lead to disparities in sentencing. The prison population reflects the cumulative effect of discrimination throughout the system.

Perhaps the most troubling statistic concerns the presumption of innocence. Fully 76% of people in Texas jails have not been convicted of a crime, meaning they are legally innocent and awaiting trial. These individuals are held primarily because they cannot afford bail, a system that effectively punishes poverty. Because Black Texans are disproportionately poor, and because bail amounts are set higher for Black defendants, pretrial detention falls most heavily on Black communities.

Source: Prison Policy Initiative - Texas Profile

The consequences of pretrial detention extend beyond the immediate loss of liberty. People held before trial lose jobs, housing, and custody of children. They face pressure to plead guilty simply to secure release, even when they might prevail at trial. Studies show that pretrial detention increases the likelihood of conviction, longer sentences, and future criminal justice involvement. The system's treatment of legally innocent people creates a cycle of disadvantage that disproportionately affects Black Texans.

Historical Trends

The disparity has narrowed somewhat over time, offering evidence that policy changes can reduce racial inequity. Between 2005 and 2019, Texas saw significant shifts in incarceration patterns.

The overall admission rate disparity ratio fell from 5.2 in 2005 to 2.6 in 2019. The imprisonment rate disparity ratio fell from 5.7 in 2005 to 3.6 in 2019. Most significantly, the Black admission rate fell by 57% from 2005 to 2019, compared to a 15% decrease in the White rate.

Source: Council on Criminal Justice - Texas Report

These trends demonstrate that racial disparities in incarceration are not immutable facts of nature. They can be reduced through deliberate action. The decline in the Black admission rate reflects changes in policing priorities, charging practices, sentencing policies, and diversion programs. Each of these levers, when adjusted, affects who enters the prison system.

However, the persistence of substantial disparities even after these improvements underscores how much work remains. A 3.3-to-1 disparity is an improvement over 5.7-to-1, but it still means that a Black Texan is more than three times as likely to be incarcerated as a white Texan. At current rates of progress, decades would pass before anything approaching parity could be achieved. More aggressive reforms are necessary to accelerate the timeline.

The narrowing disparity also masks important nuances. Some of the reduction in Black incarceration rates reflects declining crime rates in Black communities, economic improvements, and demographic shifts rather than criminal justice reform. Conversely, some reforms that reduced overall incarceration may have benefited white defendants more than Black defendants. Disaggregating the causes of change is essential to understanding which interventions are most effective at reducing racial disparities specifically.

2. Policing and Arrests

The disparities documented in Texas prisons begin on the streets, in the discretionary decisions of police officers about whom to stop, search, and arrest. Policing is the gateway to the criminal justice system, and racial disparities at this stage cascade through every subsequent stage. The data from Texas law enforcement agencies reveals patterns that cannot be explained by differences in criminal behavior alone.

Traffic Stops and Arrests

The Houston Police Department's 2024 Annual Racial Profiling Report provides granular data on how traffic enforcement operates in Texas's largest city. The numbers reveal stark racial differences in outcomes.

Race	Total Traffic Stops	Arrests	Arrest Rate
Black	100,804	4,067	4.0%
White	89,710	1,930	2.2%
Hispanic	92,036	2,130	2.3%

Black individuals had nearly double the arrest rate from traffic stops compared to white individuals.
Source: [Houston Police Department 2024 Annual Racial Profiling Report](#)

The significance of these numbers requires careful consideration. Traffic stops are the most common form of police-citizen contact. For many Texans, a traffic stop is their only direct experience with law enforcement. The decision to make a traffic stop, and what happens during that stop, shapes public perceptions of the police and the likelihood of deeper criminal justice involvement.

The disparity in arrest rates following stops is particularly revealing. If traffic stops were conducted neutrally and arrests occurred only when warranted, we would expect similar arrest rates across racial groups. The fact that Black drivers are arrested at nearly twice the rate of white drivers

suggests either that police exercise more scrutiny over Black motorists once stopped, or that stops of Black motorists are more often pretextual, designed not to address traffic violations but to investigate potential criminal activity.

This pattern, sometimes called "driving while Black," has been documented in jurisdictions across the country. In Texas, it has profound consequences. An arrest during a traffic stop can lead to job loss, incarceration, and a criminal record that affects employment, housing, and educational opportunities for years afterward. When these consequences fall disproportionately on Black drivers, they contribute to the broader patterns of inequality that pervade Texas society.

Harris County Policing Disparities

A report by Grassroots Leadership and Texas Advocates for Justice examined how policing and jail practices interact in Harris County, home to Houston and one of the largest criminal justice systems in the nation. The report identified two significant factors driving disparities: biased policing that feeds Black people into the criminal legal system, and wealth-based bail practices that keep poor and predominantly Black people in jail pretrial, coercing guilty pleas.

Source: Grassroots Leadership - Care Not Cages Report

The interaction between policing and bail is crucial. Discriminatory policing brings Black Texans into the system; discriminatory bail practices keep them there. The report found that the lead charge driving the most nights spent in the Harris County jail was possession of less than one gram of a controlled substance, typically a felony in Texas despite the small quantity involved. This charge disproportionately affects Black defendants, who are more likely to be stopped and searched, more likely to be arrested rather than released with a citation, and less likely to afford bail once arrested.

The cumulative effect is a system that extracts people from Black communities, holds them in jail regardless of guilt, and coerces guilty pleas that produce criminal records and potential prison sentences. Each step in this process is discretionary, and at each step, discretion operates to the disadvantage of Black Texans.

Search Disparities

A 2020 analysis of six million police stops by Texas A&M University researchers examined what happens when officers decide to search vehicles or individuals during stops. The findings reveal a troubling pattern.

Latinos were the most likely to be searched for contraband. Police were more likely to find contraband on searched white Texans. Police disproportionately arrested both Black and Latino individuals compared to white individuals when contraband was discovered.

Source: NACDL - Race and Policing

The contradiction at the heart of these findings deserves emphasis. If searches were conducted based on accurate assessments of likely criminality, we would expect higher "hit rates" (finding contraband) for the groups searched most often. Instead, the data shows the opposite. Officers search Black and Latino individuals more frequently, but find contraband more often when searching white individuals.

This pattern suggests that the threshold for searching a person of color is lower than the threshold for searching a white person. Officers require less suspicion, less evidence, less justification before conducting a search of a Black or Latino individual. This is the statistical signature of racial bias in policing.

The disparate arrest rates when contraband is found compounds the problem. Even when officers find illegal items, they retain discretion about whether to arrest or to pursue alternatives like warnings or citations. The data suggests that officers exercise this discretion differently depending on the race of the person involved. A white Texan found with contraband is more likely to go home; a Black or Latino Texan is more likely to go to jail.

These search and arrest disparities at the initial encounter with police echo through the entire criminal justice system. They explain, in part, why Black Texans are overrepresented in jails and prisons. The disparity is not primarily about differences in criminal behavior; it is about differences in how the system responds to behavior.

3. Marijuana Arrests

Drug enforcement has been a primary driver of mass incarceration and racial disparity in America for half a century. In Texas, marijuana arrests exemplify how a theoretically neutral law can produce profoundly unequal outcomes. The state arrests more people for marijuana possession than almost any other offense, and those arrests fall disproportionately on Black Texans despite evidence that white and Black Texans use marijuana at similar rates.

Disproportionate Arrests

The numbers reveal a stark disparity between marijuana use patterns and marijuana arrest patterns. African Americans comprise **30.2% of all marijuana possession arrests** in Texas (2017-2019), yet Black people comprise only 12.9% of the state's population. White people comprise 41% of Texas's population but only 30% of possession arrests. In 2018, Texas had the **highest total number of marijuana possession arrests in the country** at approximately 70,000.

Source: NORML - Texas Marijuana Arrest Data

To understand what these numbers mean, consider that multiple national surveys, including those conducted by the federal government, consistently find that white and Black Americans use marijuana at roughly similar rates. Some studies find slightly higher rates among white Americans. If arrest patterns reflected use patterns, we would expect arrest demographics to mirror population demographics, or perhaps to show slight overrepresentation of white individuals.

Instead, Black people are **2.6 times more likely** than white people to be arrested for marijuana possession in Texas. Between 2017 and 2021, Texas police made an estimated 219,000 marijuana-related arrests. Fully 97% were for possession only, not distribution or sale. Over half (56%) of those arrested were under 25 years of age.

Source: ACLU of Texas - Marijuana Arrest Report

The concentration of arrests among young people is significant. A marijuana arrest at age 19 or 22 can derail educational plans, disqualify individuals from financial aid, block employment opportunities, and set in motion a chain of consequences that affects the entire adult life. When

these consequences fall 2.6 times more heavily on Black youth than white youth, for behavior that both groups engage in at similar rates, the criminal justice system becomes an engine of racial inequality.

The sheer volume of marijuana arrests in Texas also warrants attention. The state's position as the national leader in marijuana possession arrests reflects a deliberate enforcement priority. Resources devoted to marijuana enforcement are resources not devoted to other public safety concerns. The choice to make marijuana a priority, when marijuana poses relatively modest public safety risks compared to violent crime, suggests that factors other than public safety drive enforcement decisions.

Worsening Trends

While total marijuana possession arrests have decreased in Texas year over year since 2017, Black people now comprise a greater percentage of those arrested than in the past.

Source: [Spectrum News - Marijuana Arrest Disparities](#)

This trend deserves particular attention because it contradicts a narrative that might otherwise provide comfort. One might assume that declining overall arrests represent progress that benefits all Texans. Instead, the data suggests that as marijuana enforcement has decreased, it has become more racially targeted. White Texans have benefited from declining enforcement more than Black Texans have.

Several mechanisms might explain this pattern. Police departments may have concentrated enforcement resources in predominantly Black neighborhoods even as overall enforcement declined. Officers exercising discretion about whether to arrest or cite may have become less likely to arrest white individuals while maintaining arrest patterns for Black individuals. Policy changes may have created formal or informal exceptions that benefit white communities more than Black communities.

Whatever the mechanism, the outcome is clear: the gap between Black and white marijuana arrest rates has widened even as total arrests have fallen. This finding should inform reform efforts. Simply reducing overall enforcement, without attention to how enforcement is distributed, may not reduce and could even increase racial disparities.

4. Pretrial Detention and Cash Bail

The American legal system rests on the presumption of innocence: individuals are presumed innocent until proven guilty. In Texas, this principle collides with a bail system that detains hundreds of thousands of legally innocent people each year, not because they are dangerous or likely to flee, but because they are poor. Because poverty in Texas correlates with race, the bail system produces profound racial disparities in who remains free before trial and who sits in jail.

Wealth-Based Detention

The constitutional problems with Texas bail practices have been documented in federal courts. In the *Daves v. Dallas County* case (2018-2024), a federal district court judge found that Dallas County's pre-trial detention system routinely violates constitutional rights of inmates who cannot afford bail. The county uses "wealth-based detention" by imposing pre-set bail amounts that keep poor defendants locked up while wealthier ones go free.

Source: Texas Tribune - Dallas County Bail Case

The term "wealth-based detention" captures the fundamental inequity of the system. Two people arrested for the same offense, with identical criminal histories and community ties, face dramatically different outcomes based solely on their bank accounts. The person who can pay bail goes home, continues working, prepares their defense from a position of freedom, and faces trial as an innocent person. The person who cannot pay sits in jail, loses their job, possibly loses their housing, struggles to assist in their own defense, and faces enormous pressure to plead guilty simply to get out.

This system inverts the presumption of innocence. Rather than requiring the government to prove that detention is necessary, it requires defendants to prove they can afford freedom. The Constitution prohibits excessive bail, but when any bail amount is excessive for someone with no money, the constitutional protection becomes meaningless.

The pressure to plead guilty deserves particular emphasis. Prosecutors can offer deals that promise immediate release in exchange for a guilty plea. For someone who has already spent weeks in jail, who has lost their job and fears losing their apartment, the rational choice may be to plead guilty

regardless of actual guilt. Studies confirm that pretrial detention dramatically increases guilty plea rates, even controlling for the strength of the evidence. The bail system thus produces convictions that may not reflect actual guilt.

Racial Impact of Cash Bail

The facially neutral operation of the bail system produces racially disparate outcomes through several mechanisms. People in poverty and Black and brown people are less likely to be able to afford bail. Bails are set at higher rates for Black and Latino people. Black people are less likely to be released on their own recognizance. Black people are more likely to be detained without bail entirely.

Source: Prison Policy Initiative - Texas Bail Analysis

Each of these mechanisms compounds the others. Because Black Texans are more likely to be arrested for equivalent behavior, they enter the bail system more often. Because bail amounts are set higher for Black defendants, they are less able to pay. Because they are less likely to be released on recognizance, they must rely on cash bail rather than alternatives. Because they are poorer on average due to historical and ongoing discrimination, they cannot raise the money.

The result is that Black Texans spend more time in jail before trial than white Texans accused of similar offenses. This pretrial detention affects their cases, increasing conviction rates and sentence lengths. It affects their lives, causing job loss, family disruption, and financial ruin. And it affects their communities, removing wage earners, parents, and community members.

The bail system also creates perverse incentives for the bail bond industry. Bail bondsmen profit from the current system and lobby against reform. Their business model depends on a steady supply of defendants who cannot afford bail but can scrape together enough for a bond premium. Reforms that would reduce pretrial detention threaten this profit center, creating organized opposition to change.

National Research Context

Texas is not unique in its bail practices, and national research helps contextualize the state's experience. In large urban areas, Black defendants accused of felonies are **25% more likely** than white defendants to be held pretrial. A study in Miami and Philadelphia found Black defendants were 3.6 percentage points more likely to be assigned monetary bail, and received bail amounts that were approximately **\$9,923 greater** than white defendants.

Source: Prison Policy Initiative - Pretrial Racial Disparities

The consistency of these findings across jurisdictions suggests systemic rather than idiosyncratic causes. Judges and magistrates across the country, operating under different state laws and local customs, nonetheless produce similar racial disparities. This pattern is consistent with implicit bias research showing that decision-makers unconsciously perceive Black defendants as more dangerous and less trustworthy, leading to higher bail amounts and more frequent detention.

The dollar figure of nearly \$10,000 in additional bail for Black defendants represents real consequences. That amount could represent months of rent, years of car payments, or a child's college fund. When Black defendants must post bail thousands of dollars higher than white defendants for equivalent charges, their families bear a financial burden that contributes to the racial wealth gap.

Bail reform has succeeded in some jurisdictions. New Jersey largely eliminated cash bail and saw pretrial jail populations decline significantly without increases in crime. While failure-to-appear rates increased modestly (appearance rates declined from 92.7% to 89.4%), new criminal activity during pretrial release remained low, and the overall results supported the reform. Harris County reformed its misdemeanor bail practices under court order and experienced positive results. These outcomes demonstrate that the current system is not necessary for public safety. Texas could adopt proven alternatives, but has instead moved to entrench the status quo.

5. Sentencing Disparities

Once convicted, Black Texans face longer sentences than white Texans convicted of similar crimes. These disparities compound the effects of differential policing, arrest, and pretrial detention. A Black defendant who was more likely to be stopped, more likely to be arrested, more likely to be detained before trial, and more likely to be convicted due to that detention then faces a longer sentence than a white defendant whose case proceeded differently at every prior stage.

Texas-Specific Findings

The cumulative effect of disparities throughout the system is stark. Black Texans are **over three times as likely to be imprisoned** as white Texans. This ratio reflects not a single decision point but the multiplicative effect of disparities at each stage.

Source: The Sentencing Project - Texas Fact Sheet

The historical roots of these disparities run deep. During the early years of the "War on Drugs," Black people, despite using drugs at similar rates as white people, accounted for **81% of the increase** in Texas's prison population for drug offenses. This statistic reveals how policy choices drove incarceration. The War on Drugs was not a neutral response to drug use; it was a targeted campaign that focused enforcement resources on Black communities, produced disparate arrests, and resulted in disparate imprisonment.

The legacy of that era persists today. Texans imprisoned during the crack cocaine era remain incarcerated under sentences that would not be imposed today. Communities disrupted by mass incarceration have not recovered. The criminal records accumulated during decades of racially targeted enforcement continue to limit opportunities for millions of Texans.

Limited Impact of Reforms

The persistence of disparities despite reform efforts is particularly troubling. Researchers at the Council on Criminal Justice, Georgia State University, and the Crime and Justice Institute examined more than 700 statutes adopted in 12 states, including Texas, between 2010 and 2020. The analysis found that **sentencing reforms had negligible impacts on reducing racial disparities**.

Source: Council on Criminal Justice - Sentencing Reform Analysis

This finding should give pause to those who believe that incremental reform will eventually solve the problem. Over a decade of legislative effort across multiple states produced hundreds of new laws aimed at reducing incarceration. Yet racial disparities remained essentially unchanged. The reforms that passed may have reduced overall incarceration, but they did not address the mechanisms producing racial inequality.

Several explanations for this failure are possible. Reforms may have been designed without attention to racial impact, benefiting all defendants equally rather than targeting the sources of disparity. Prosecutorial and judicial discretion may have adapted to reforms in ways that preserved existing patterns. Reforms may have been too modest to overcome the cumulative weight of decisions made before sentencing.

Whatever the explanation, the implication is clear: reforms specifically designed to reduce racial disparities are necessary. General sentencing reform, while valuable, is not sufficient. Advocates must identify and target the specific mechanisms producing racial inequality, whether in prosecutorial charging decisions, judicial sentencing discretion, or the structure of sentencing guidelines themselves.

Federal Sentencing Data (2024)

Federal courts operate under different rules than Texas state courts, but federal sentencing data provides additional evidence of racial disparities. According to the U.S. Sentencing Commission's 2023 report (published November 2023), Black males received sentences **13.4% longer** than white males. Hispanic males received sentences **11.2% longer** than white males. Black males were **23.4% less likely** to receive a probationary sentence compared to white males.

Source: U.S. Sentencing Commission - 2023 Demographic Differences Report

These disparities persist after controlling for offense characteristics, criminal history, and other factors that legitimately affect sentencing. The remaining gap represents the effect of race itself on sentencing outcomes. Judges impose longer sentences on Black and Hispanic defendants than on white defendants convicted of equivalent offenses with equivalent backgrounds.

The disparity in probationary sentences is particularly significant. Probation allows convicted defendants to remain in the community under supervision, avoiding the devastating effects of imprisonment on employment, family, and future prospects. That Black males are nearly a quarter less likely to receive this alternative means they are more likely to go to prison when prison could have been avoided. Each such decision contributes to the racial composition of prison populations.

Federal sentencing guidelines were designed in part to reduce discretion and thereby reduce disparity. The persistence of substantial racial gaps despite guidelines suggests that discretion remains, or that the guidelines themselves incorporate factors that correlate with race. Reform of sentencing guidelines must examine whether facially neutral factors produce racially disparate outcomes.

6. Death Penalty

The ultimate expression of the criminal justice system's power is the authority to take life. Texas exercises this power more than any other state, and it exercises it with profound racial disparity. The data on death row demographics, death sentencing patterns, and the role of victim race reveals a system in which life and death decisions are influenced by the color of the defendant's skin and the color of the victim's skin.

Current Death Row Demographics

The current population of Texas death row does not reflect the population of Texas. Black individuals comprise **47.6%** of the Texas death row population. Hispanic/Latino individuals comprise **26.8%**. White individuals comprise **23.2%**. Stated differently, Black individuals constitute 46.6% of death row inmates while representing just **13.6%** of Texas residents.

Source: TDCJ - Death Row Gender and Racial Statistics

The overrepresentation of Black defendants on death row by a factor of more than three cannot be explained by differential rates of death-eligible offenses alone. Researchers who have examined the question consistently find racial disparities that persist after controlling for the nature of the crime, the defendant's criminal history, and other relevant factors. Race influences who receives death sentences.

This disparity matters not only for those on death row but for what it reveals about the system. If the ultimate punishment is imposed in racially disparate ways, there is little reason to believe that lesser punishments are imposed fairly. Death penalty data provides a window into how the system values lives and makes judgments about who deserves the most severe consequences.

Recent Death Sentences

The pattern of racial disparity is not merely historical; it continues in recent sentencing. Over the last five years, **nearly 70%** of death sentences have been imposed on people of color. More than **40%** were imposed on Black defendants. In 2024 alone, Texas juries imposed six new death sentences.

Source: TCADP - Texas Death Penalty Facts

The persistence of these patterns in recent years undermines any claim that historical disparities are being corrected. Contemporary juries, contemporary prosecutors, and contemporary judges continue to produce outcomes in which people of color receive death sentences at rates far exceeding their share of the population. Whatever has changed in Texas criminal justice, the racial dynamics of capital punishment have not.

These disparities also affect public confidence in the justice system. When community members see that death sentences fall disproportionately on Black defendants, they have reason to question whether the system operates fairly. This perception undermines cooperation with law enforcement, willingness to serve on juries, and faith in legal institutions. The racial disparity in death sentencing thus damages the legitimacy of the entire criminal justice system.

Harris County Disparities

Harris County, which includes Houston and is one of the largest death penalty jurisdictions in the country, provides a detailed case study of racial disparity in capital punishment. A February 2024 report from the Texas Defender Service titled "Arbitrary and Capricious: Examining Racial Disparities in Harris County's Pursuit of Death Sentences" found patterns that are difficult to explain as anything other than systemic bias.

Of the last 21 people sentenced to death in Harris County, **20 (95%) were people of color**. Of those 21, **15 were Black men**. Expanding slightly, 21 of the last 22 defendants sentenced to death in Harris County are people of color: 16 are Black, 4 are Hispanic, and 1 is another non-white race/ethnicity. **Ronald Haskell (2019)** was the first white defendant in Harris County to receive a death sentence since November 2004.

Source: Death Penalty Information Center - Harris County Report

The concentration of death sentences among people of color in Harris County approaches totality. For nearly two decades, white defendants in Harris County have been functionally exempt from the death penalty, regardless of the severity of their crimes. Meanwhile, Black men have received death sentence after death sentence. This pattern cannot be explained by differential offense severity; it reflects differential treatment.

The Harris County experience also raises questions about prosecutorial discretion. District attorneys decide which cases to prosecute capitally. Their decisions about when to seek death determine, in large part, who ends up on death row. If prosecutors are more likely to seek death against Black defendants than white defendants accused of comparable crimes, they become engines of racial disparity regardless of what juries ultimately decide.

Tarrant County

The pattern in Harris County is not unique. All six men sentenced to death in Tarrant County since 2013 are people of color, five of whom are Black.

Source: TCADP - Texas Death Penalty Facts

Tarrant County, which includes Fort Worth, is politically and demographically different from Harris County. That similar patterns emerge in both jurisdictions suggests that the mechanisms producing racial disparity in death sentencing operate across different contexts. Whether the cause is prosecutorial decision-making, jury composition, defense resource disparities, or some combination, the outcome is consistent: people of color receive death sentences while white defendants do not.

Victim Race Factor

The race of the defendant is not the only racial factor affecting death penalty outcomes. The race of the victim also plays a significant role. Research has consistently found that defendants who kill white victims are more likely to receive death sentences than defendants who kill Black victims, regardless of the defendant's race.

The landmark Baldus study, examining Georgia death penalty cases, found that defendants in cases involving white victims were 4.3 times more likely to receive a death sentence than those in cases involving Black victims. In that study, **22%** of Black defendants who killed white victims received death sentences, compared to just **1%** of Black defendants who killed Black victims.

Source: Capital Punishment in Context - Race and the Death Penalty

This victim race effect reveals something troubling about how the system values lives. When the killing of a white person is more likely to result in a death sentence than the killing of a Black person, the system implicitly treats white lives as more valuable. This is not explicit policy, but it is measurable outcome.

The combination of defendant race and victim race effects produces the most extreme disparities. A Black defendant accused of killing a white victim faces the highest likelihood of a death sentence. A white defendant accused of killing a Black victim faces the lowest. The system's harshest punishment is reserved for Black-on-white crime, while white-on-Black crime is treated most leniently.

7. Juvenile Justice

The racial disparities that pervade the adult criminal justice system are present, and in some measures more severe, in the juvenile justice system. Black and Hispanic youth in Texas are dramatically overrepresented in juvenile facilities, setting them on trajectories that increase the likelihood of adult incarceration. The treatment of children in the justice system reveals whether society views young people of color as worthy of rehabilitation or merely as future criminals to be warehoused.

Texas Youth Incarceration

The statistics on youth incarceration in Texas reflect disparities even more extreme than those in the adult system. **29%** of youth referred to Texas Juvenile Justice Department (TJJD) facilities are Black, despite Black youth comprising only **11%** of the Texas juvenile population. Black and Hispanic youth collectively comprise **76%** of the total population in all five TJJD facilities.

Source: Harvard Political Review - The Juvenile "Injustice" System

The overrepresentation of Black youth by nearly threefold means that a Black child in Texas is roughly three times more likely than a white child to end up in a TJJD facility. This disparity cannot be explained by differential delinquency rates. Studies of youth behavior consistently find that white and Black youth engage in delinquent acts at similar rates, much as adults use drugs at similar rates. The disparity reflects how the system responds to behavior, not the behavior itself.

The concentration of Black and Hispanic youth at 76% of the TJJD population transforms juvenile facilities into institutions that primarily serve to incarcerate children of color. White youth who engage in delinquent behavior are more likely to be diverted, counseled, given second chances. Youth of color who engage in similar behavior are more likely to be arrested, prosecuted, and confined. The system sorts children by race.

National Context

Texas fits within a national pattern of racial disparity in juvenile justice, though the national picture has grown worse even as youth incarceration overall has declined. As of 2023, Black youth were **5.6 times as likely** to be placed (detained or committed) in juvenile facilities as their white peers. This disparity is at an **all-time high** based on data starting in 1997.

Source: The Sentencing Project - Black Disparities in Youth Incarceration

The fact that racial disparity in youth incarceration has reached an all-time high while overall youth incarceration has fallen mirrors the pattern in marijuana arrests. Declining overall numbers have not translated into declining disparities. Instead, as the system has become more selective about which youth to incarcerate, it has become more racially selective as well. White youth have benefited from the turn away from juvenile incarceration more than Black youth have.

This pattern suggests that reforms reducing overall incarceration without explicit attention to racial equity may worsen disparities. Decision-makers with more discretion may exercise that discretion in racially biased ways. Advocates must therefore focus not only on reducing incarceration but on ensuring that reductions benefit all youth equally.

Contributing Factors

The disparities in juvenile incarceration reflect decisions made long before youth reach detention facilities. Black students are more likely to attend schools with zero-tolerance policies and law enforcement presence on campus. This increases a student's chance of being arrested at a young age, expelled, or suspended.

Source: The Sentencing Project - Protect and Redirect

The "school-to-prison pipeline" describes how school discipline practices funnel students, particularly Black students, into the criminal justice system. Behaviors that might once have resulted in a trip to the principal's office now result in arrests. School resource officers who police school hallways bring criminal justice tools to bear on childhood misbehavior. Suspensions and expulsions push students out of school and onto the streets, increasing the likelihood of criminal justice contact.

The disparate treatment at the diversion stage is particularly significant. Youth of color are offered diversion far less often than white youth. When a white youth and a Black youth commit similar offenses, the white youth is more likely to be diverted to counseling, community service, or other alternatives. The Black youth is more likely to be prosecuted formally.

Unequal treatment at the diversion stage is a major driver of subsequent disparities in incarceration. If Black youth were diverted at the same rate as white youth, far fewer would proceed through the formal juvenile justice system, and the population of TJJD facilities would look very different. The discretionary decision to divert or prosecute thus shapes the racial composition of youth incarceration.

8. Felony Disenfranchisement

The consequences of criminal justice involvement extend beyond incarceration. In Texas, a felony conviction can mean the loss of the right to vote, a fundamental attribute of citizenship. Because Black Texans are convicted of felonies at higher rates due to the disparities documented throughout this report, they are disproportionately stripped of political voice. This disenfranchisement silences communities that might otherwise advocate for criminal justice reform.

Voting Rights Impact

The scale of felony disenfranchisement in Texas is massive. Over **479,000 Texans** cannot vote due to a felony conviction, the second largest disenfranchised population in the country behind Florida. Texas prohibits voting for individuals on felony probation, parole, or incarcerated for a felony-level conviction. Over **327,000 people** are banned from voting while completing their sentence on felony probation or parole, meaning they live in communities, work jobs, and pay taxes but cannot participate in choosing their representatives.

Source: The Sentencing Project - Texas Voting Rights Fact Sheet

The number 479,000 represents more than statistics. It represents nearly half a million Texans who cannot vote for the local district attorney who decides whether to prosecute aggressively, the state legislators who set sentencing ranges, the judges who impose sentences, or the governor who might grant clemency. These individuals have the most direct stake in criminal justice policy, yet they are excluded from the political process that shapes that policy.

The inclusion of those on probation and parole in the disenfranchised population is particularly consequential. These are individuals who have served their prison time or never went to prison at all. They are reintegrating into communities, maintaining employment, supporting families. Yet Texas treats them as unworthy of the vote. This continued punishment after the formal sentence has ended perpetuates the stigma of conviction and impedes full reintegration into society.

Racial Disparities in Disenfranchisement

Because felony convictions fall disproportionately on Black Texans, so does disenfranchisement. Voting-eligible Black Texans are roughly **2.5 times as likely** as non-Black Texans to lose their right to vote due to a felony-level conviction. Latino Texans are **1.2 times as likely** as non-Latino Texans to lose their right to vote.

Source: The Sentencing Project - Texas Voting Rights Fact Sheet

The 2.5-fold disparity in Black disenfranchisement mirrors the disparities in incarceration, because disenfranchisement follows from conviction. Every disparity documented earlier in this report, from policing through sentencing, contributes to this outcome. The cumulative effect is a substantial reduction in Black political power.

This reduction matters for democracy. When a significant fraction of a community cannot vote, that community's interests receive less attention from elected officials. Politicians have less incentive to respond to the concerns of people who cannot vote them in or out of office. The disenfranchisement of Black Texans thus perpetuates the conditions that produced their disenfranchisement, creating a cycle that is difficult to break through normal political channels.

Historical Context

Felony disenfranchisement in Texas is not a recent innovation. Texas law has disenfranchised people convicted of felonies since 1845. Throughout its history, the law has had a racially disparate impact, both intentionally and unintentionally. While Texas formally ended lifetime felony disenfranchisement in 1983, it has been slow to adopt further reforms.

Source: The Sentencing Project - Texas Voting Rights Fact Sheet (PDF)

The historical origins of felony disenfranchisement laws are intertwined with the history of racial exclusion. Many states, including Texas, expanded disenfranchisement provisions after the Civil War and the enfranchisement of Black men through the Fifteenth Amendment. These expansions were explicitly designed to reduce Black political power while maintaining a veneer of neutrality. Offenses disproportionately charged against Black people were added to the list of disenfranchising crimes.

This history does not mean that everyone who supports current disenfranchisement laws has racist intent. But it does mean that the laws carry a legacy of racial exclusion, and that their current disparate impact continues a pattern established for discriminatory purposes. Understanding this history is essential to evaluating whether current laws can be justified.

The slow pace of reform in Texas contrasts with movement in other states. States across the political spectrum have expanded voting rights for people with felony convictions, recognizing that civic participation aids reintegration and that the costs of disenfranchisement outweigh any benefits. Florida voters approved automatic restoration of voting rights in 2018, though legislative implementation has been contested. Maine and Vermont never disenfranchise for felonies at all. Texas's refusal to reform places it among the most restrictive states in the country.

9. Key Contributing Factors

The disparities documented in this report do not arise from a single cause. They reflect the interaction of multiple systemic factors that compound at each stage of the criminal justice process. Understanding these contributing factors is essential to designing effective reforms. Interventions that address only one factor while leaving others untouched may fail to reduce overall disparities.

Systemic Issues

Research has identified several systemic factors contributing to racial disparities in Texas criminal justice. These factors interact and reinforce each other, creating patterns that are resistant to change.

Differential Policing stands as the gateway to all subsequent disparities. Black and Hispanic individuals are more likely to encounter police, be stopped, and be searched. This is true even in contexts where there is no evidence of differential criminal behavior. Policing practices that concentrate resources in Black neighborhoods, that use race as a factor in suspicion, or that subject people of color to greater scrutiny all contribute to differential policing.

The effects of differential policing cascade through the system. More contact with police means more opportunities for arrest. More arrests mean more prosecutions. More prosecutions mean more convictions. The initial disparity multiplies as cases proceed through the system.

Pretrial Detention transforms poverty into punishment and disproportionately impacts communities of color. Wealth-based bail systems keep people locked up not because they are dangerous or likely to flee, but because they cannot pay. This detention coerces guilty pleas, disrupts employment and families, and increases the likelihood of conviction and incarceration.

Because Black and Hispanic Texans are more likely to be poor due to historical and ongoing discrimination, and because bail amounts are set higher for defendants of color, pretrial detention falls disproportionately on these communities. The bail system thus converts economic inequality into criminal justice inequality.

Prosecutorial Discretion represents one of the least visible but most consequential sources of disparity. A University of Michigan Law School study found that federal prosecutors file charges carrying mandatory minimum sentences 65% more often against Black defendants than other defendants with similar circumstances. Texas prosecutors exercise similar discretion, though less data is available at the state level.

Source: NACDL - Race and Sentencing

Charging decisions determine the maximum possible sentence, influence plea negotiations, and shape every subsequent stage of a case. When prosecutors charge Black defendants more harshly than white defendants accused of similar conduct, they embed racial disparity into case outcomes regardless of what judges and juries do later.

The School-to-Prison Pipeline begins the process of criminal justice involvement early in life. Zero-tolerance policies and school-based policing disproportionately affect Black youth, producing arrests, suspensions, and expulsions that increase the likelihood of criminal justice contact. These early contacts can define life trajectories, funneling young people of color into the justice system while their white peers receive second chances. **Drug Enforcement** has been a primary driver of racial disparity for decades. Despite similar usage rates, Black Texans face far higher arrest rates for drug offenses. The War on Drugs targeted Black communities through enforcement priorities, sentencing disparities (such as the crack-powder cocaine distinction), and selective prosecution. Though some reforms have reduced the role of drug offenses in driving incarceration, the effects of decades of racially disparate enforcement persist.

10. Recent Developments (2024-2025)

The situation in Texas is not static. Recent years have brought both reforms that reduce disparities and countermeasures that threaten to entrench them. Understanding the current trajectory requires attention to both positive and concerning developments.

Positive Developments

Progress on bail reform offers the most significant recent success. Harris County bail reform has reduced racial disparities, decreased pretrial detention, and increased court appearance rates, disproving predictions that reform would increase crime or court no-shows.

Source: The Bail Project - Houston DA Legacy

The Harris County experience demonstrates that the current bail system is not necessary for public safety. When the county stopped detaining people solely because they could not afford bail, crime did not increase. When it provided alternatives to cash bail, defendants still appeared for court. The feared consequences of reform did not materialize.

This evidence matters because opponents of reform often argue that current practices, however inequitable, are necessary to protect public safety. Harris County's experience refutes this argument. Reform is not only more just but equally effective at achieving legitimate criminal justice goals.

The success of bail reform in Harris County resulted from litigation, advocacy, and eventually political change. Civil rights organizations brought lawsuits challenging bail practices. Community groups organized to demand reform. Voters elected officials committed to change. The combination of legal pressure and political mobilization produced results that neither alone might have achieved.

Concerning Developments

Set against these reforms are countermeasures that threaten to roll back progress and entrench racial disparities. In August 2024, Governor Abbott announced that over one million people had been removed from Texas voter rolls since 2021 under legislation passed that year, including over 6,000 people identified as having felony convictions.

Source: [Texas Tribune - Abbott Voter Roll Announcement](#)

Abbott and conservative lawmakers have successfully changed the state constitution to enshrine features of the current bail system. In November 2025, Texas voters approved Proposition 3, a constitutional amendment expanding pretrial detention powers that could worsen racial disparities.

Source: [Prison Policy Initiative - Texas Bail Analysis](#)

The constitutional change is particularly concerning. Constitutional amendments are difficult to reverse and insulate policies from judicial review. Now that Texas voters have approved amendments that constitutionalize wealth-based bail, the legal challenges that produced Harris County reform may be foreclosed. Future reformers will need to amend the constitution before they can change the law.

These countermeasures reflect a political backlash against criminal justice reform. As reform efforts have succeeded in some jurisdictions, opponents have organized to prevent their spread and to reverse gains where possible. This backlash draws on fears about crime, resistance to racial equity, and the political power of industries that profit from the current system.

The trajectory of reform in Texas now faces significant headwinds. While the evidence demonstrates that reform can reduce racial disparities without compromising public safety, the passage of Proposition 3 signals that the state has chosen entrenchment over continued reform. Whether advocates can reverse this trajectory is a question that will be answered by sustained litigation, legislative effort, and community organizing in the years ahead.

11. Using Current Law to Fight Injustice

The disparities documented in this report are not merely moral failures; many constitute violations of existing legal protections. This section examines the legal tools available to advocates, attorneys, and affected individuals seeking to challenge racial discrimination in the Texas criminal justice system. While legislative reform remains essential, current constitutional provisions, federal statutes, and state laws provide meaningful avenues for redress.

Constitutional Protections

Fourteenth Amendment Equal Protection

The Equal Protection Clause of the Fourteenth Amendment provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." This guarantee stands as the primary constitutional bulwark against racial discrimination in criminal justice. However, the Supreme Court's interpretation of this clause has created significant obstacles for those challenging racially disparate outcomes.

In *Washington v. Davis* (1976), the Supreme Court held that facially neutral laws with racially disparate impacts do not violate the Equal Protection Clause unless plaintiffs can demonstrate discriminatory intent. This standard was applied specifically to the criminal justice context in *McCleskey v. Kemp* (1987), where the Court rejected a challenge to Georgia's death penalty despite compelling statistical evidence that defendants who killed white victims were 4.3 times more likely to receive death sentences than those who killed Black victims. The Court reasoned that statistical disparities alone, even when controlling for relevant variables, were insufficient to prove the discriminatory purpose required under *Washington v. Davis*.

These precedents create formidable barriers, but they do not foreclose all equal protection challenges. Courts have found discriminatory intent where statistical evidence is combined with other factors, such as the historical background of the challenged decision, departures from normal procedural sequences, legislative or administrative history, and contemporaneous statements by

decision-makers. The disparities documented in this report, particularly when combined with evidence of their historical roots and the failure to address them despite decades of awareness, may support inferences of discriminatory purpose in appropriate cases.

Recent circuit court decisions have shown some willingness to revisit the implications of *McCleskey* in specific contexts. Advocates should monitor developments in the Fifth Circuit, which has jurisdiction over Texas, for opportunities to advance equal protection claims supported by the kind of comprehensive data presented in this report.

Eighth Amendment Challenges

The Eighth Amendment's prohibition on cruel and unusual punishment offers another avenue for challenging racially disparate outcomes, particularly in sentencing and capital cases. While the Supreme Court declined to find that racial disparities in death sentencing violate the Eighth Amendment in *McCleskey*, subsequent decisions have expanded Eighth Amendment protections in ways that may be relevant to racial justice claims.

In the capital context, *Batson v. Kentucky* (1986) prohibits prosecutors from using peremptory challenges to exclude jurors on the basis of race. Given the data showing that 95% of recent death sentences in Harris County were imposed on people of color, defense attorneys should rigorously document and challenge any patterns of racially discriminatory jury selection. The Court's decision in *Flowers v. Mississippi* (2019) reaffirmed the vitality of *Batson* and its applicability to prosecutors with histories of racial discrimination in jury selection.

The Eighth Amendment also prohibits excessive bail and has been interpreted to require that bail be set no higher than necessary to ensure the defendant's appearance at trial. Where bail amounts are systematically set at levels that poor defendants, disproportionately people of color, cannot afford, and where this results in pretrial detention that serves no legitimate governmental purpose, Eighth Amendment challenges may be viable. The conditions experienced by pretrial detainees held solely because of inability to pay may also give rise to Eighth Amendment claims regarding conditions of confinement.

Proportionality challenges under the Eighth Amendment may be available where defendants receive sentences grossly disproportionate to their offenses. While the Supreme Court has been reluctant to find non-capital sentences unconstitutionally disproportionate, the extreme sentences imposed for drug offenses that have driven much of the racially disparate incarceration documented in this report may warrant renewed attention under evolving Eighth Amendment standards.

Due Process Claims

The Due Process Clauses of the Fifth and Fourteenth Amendments protect both procedural and substantive rights that are implicated by the disparities documented in this report. Procedural due process requires fair procedures before the government may deprive individuals of life, liberty, or property. Substantive due process protects fundamental rights from government interference regardless of the procedures employed.

The most successful recent challenges to racially disparate criminal justice practices have relied on due process theories. In *ODonnell v. Harris County* (2017), a federal district court found that Harris County's bail system violated the due process and equal protection rights of indigent misdemeanor arrestees by detaining them solely because they could not afford bail, while releasing similarly situated defendants who could pay. The Fifth Circuit affirmed key aspects of this ruling, establishing important precedent for challenging wealth-based detention systems throughout Texas and the region.

Similarly, in *Daves v. Dallas County*, plaintiffs challenged Dallas County's pretrial detention practices on due process grounds. A federal district court initially found that the county's system of imposing predetermined bail amounts without individualized assessment of defendants' ability to pay violated fundamental liberty interests protected by the Due Process Clause. However, the en banc Fifth Circuit ultimately vacated the preliminary injunction in 2022, and the Supreme Court denied certiorari in 2024. Despite the unfavorable appellate outcome, the litigation highlighted important due process concerns that continue to inform reform efforts.

Procedural due process requires that bail hearings provide meaningful opportunities for defendants to be heard on their ability to pay and on the availability of less restrictive alternatives to detention. Where Texas counties conduct cursory bail hearings that result in the pretrial detention of thousands of legally innocent people, disproportionately people of color, due process challenges remain viable and important.

Fourth Amendment

The Fourth Amendment's protections against unreasonable searches and seizures provide tools for challenging the discriminatory policing practices that feed racial disparities at every subsequent stage of the criminal justice system. The data in this report showing that Black and Latino Texans are more likely to be stopped, searched, and arrested, even though contraband is more frequently found on white individuals, suggests systematic Fourth Amendment violations.

When officers lack reasonable suspicion or probable cause for stops and searches, any evidence obtained must be suppressed under the exclusionary rule. Defense attorneys should routinely challenge the legality of stops and searches in cases involving clients of color, particularly in jurisdictions with documented patterns of discriminatory enforcement. Successful suppression motions not only protect individual clients but also create systemic incentives for departments to reform their practices.

Fourth Amendment challenges may also be available in civil litigation. Individuals subjected to unlawful stops and searches may bring claims under 42 U.S.C. § 1983 for violations of their Fourth Amendment rights. Class action litigation challenging departmental policies that result in discriminatory stop-and-frisk practices has succeeded in other jurisdictions and may be appropriate in Texas cities with documented patterns of racial profiling.

The consent search doctrine presents particular concerns in communities of color, where historical and ongoing police practices may create coercive environments that vitiate voluntary consent. Defense attorneys should carefully scrutinize the circumstances of consent searches and challenge their validity where consent was obtained through explicit or implicit coercion.

Federal Civil Rights Statutes

42 U.S.C. § 1983

Section 1983 of Title 42 provides a cause of action against any person who, acting under color of state law, deprives another of rights secured by the Constitution or federal law. This statute is the primary vehicle for civil rights litigation against state and local officials, including law enforcement officers, prosecutors, judges acting in non-judicial capacities, and municipalities.

Section 1983 claims face significant obstacles, most notably the doctrine of qualified immunity, which shields officials from liability unless their conduct violated "clearly established" constitutional rights. Courts have interpreted this standard narrowly, often requiring plaintiffs to identify prior cases with nearly identical facts before officials can be held liable. This doctrine has been widely criticized for effectively immunizing even egregious misconduct, and reform efforts continue at both the judicial and legislative levels. Advocates in Texas should monitor these developments and be prepared to argue for qualified immunity reform or its inapplicability in cases involving clear constitutional violations.

Municipal liability under *Monell v. Department of Social Services* (1978) offers another avenue for Section 1983 claims. While municipalities cannot be held liable under respondeat superior for the acts of their employees, they can be sued when the constitutional violation resulted from an official

policy or custom, or a decision by an official with final policymaking authority. Additionally, under *City of Canton v. Harris* (1989), municipalities may be liable for deliberate indifference to the need for training or supervision. The systematic nature of the disparities documented in this report may support Monell claims against Texas counties and municipalities whose policies or customs have produced discriminatory outcomes.

Pattern-or-practice evidence, such as the traffic stop and arrest data from Houston showing Black individuals arrested at nearly twice the rate of white individuals, can support both individual and municipal liability claims. Such evidence helps establish that constitutional violations are not isolated incidents but rather the predictable results of departmental policies or customs.

42 U.S.C. § 1981

Section 1981 guarantees all persons the same right "to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens." Originally enacted as part of the Civil Rights Act of 1866, this statute has been interpreted to prohibit racial discrimination in a variety of contexts.

While Section 1981 has been applied primarily in employment and contracting contexts, its guarantee of equal benefit of laws and proceedings has potential application to criminal justice disparities. The statute's reference to the right to "give evidence" and to "sue, be parties" in legal proceedings suggests protections for equal treatment in the courts. Creative litigation may find applications for Section 1981 in challenging discriminatory practices in bail hearings, plea negotiations, and sentencing proceedings.

One advantage of Section 1981 is that it does not require state action for all claims, potentially reaching private actors whose conduct contributes to racial disparities. Additionally, Section 1981 claims are not subject to qualified immunity, making them potentially more viable than Section 1983 claims against individual defendants.

42 U.S.C. § 14141 (Pattern or Practice Investigations)

Section 14141 (now recodified at 34 U.S.C. § 12601) authorizes the U.S. Department of Justice to investigate and bring civil actions against law enforcement agencies that engage in patterns or practices of constitutional violations. This statute has been the basis for DOJ investigations of police departments across the country, often resulting in consent decrees that mandate comprehensive reforms.

Texas jurisdictions with documented patterns of discriminatory policing, including those identified in this report, are appropriate candidates for DOJ investigation. The Houston Police Department's own data showing racial disparities in traffic stop outcomes, combined with external reports documenting discriminatory practices in Harris County, provide a substantial basis for federal scrutiny.

Advocacy organizations and community members can encourage DOJ investigations by documenting patterns of misconduct, filing formal complaints with the Civil Rights Division, and engaging congressional representatives who can press for federal attention to local problems. While DOJ enforcement priorities vary across administrations, building the evidentiary record for potential investigation remains important regardless of the current political environment.

Consent decrees resulting from Section 14141 litigation have produced measurable improvements in some jurisdictions, including reduced use of force, improved training and supervision, and greater transparency. However, the effectiveness of consent decrees depends on sustained monitoring and enforcement, and some jurisdictions have resisted or evaded their requirements. Advocates should study both the successes and limitations of consent decrees in other jurisdictions to inform strategies for Texas.

Title VI of the Civil Rights Act

Title VI prohibits discrimination on the basis of race, color, or national origin by recipients of federal financial assistance. Because state and local criminal justice agencies receive substantial federal funding, they are subject to Title VI's requirements.

Administrative complaints may be filed with the relevant federal funding agency, typically the Department of Justice's Office of Justice Programs for criminal justice matters. These complaints can trigger investigations and, ultimately, the termination of federal funding for agencies found to be in violation. While fund termination is rare, the threat of losing federal dollars can provide leverage for reform.

The Supreme Court's decision in *Alexander v. Sandoval* (2001) eliminated the private right of action to enforce Title VI's disparate impact regulations, limiting plaintiffs to claims of intentional discrimination. However, administrative enforcement remains available, and advocates can use the Title VI complaint process to bring federal attention to discriminatory practices even where private litigation is not viable.

Title VI complaints should document not only the existence of racial disparities but also the failure of agencies to take corrective action despite awareness of the problem. Such complaints can be particularly effective when coordinated with other advocacy strategies, including media attention and community organizing.

Texas State Law Remedies

Texas Constitution

The Texas Constitution contains provisions that may provide broader protections against racial discrimination than their federal counterparts. Article I, Section 3 provides that "all free men" (historical language retained in the constitutional text) "have equal rights," language that Texas courts have sometimes interpreted to provide protections beyond those available under the federal Equal Protection Clause. Article I, Section 19 guarantees that no citizen shall be "deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land," a due process guarantee that may support challenges to discriminatory criminal justice practices.

Article I, Section 13 provides that excessive bail shall not be required. This provision, combined with Section 11's guarantee that all prisoners are bailable except in capital cases and certain other limited circumstances, provides a textual basis for challenging the bail practices that have contributed to racial disparities in pretrial detention. Texas courts have not always given these provisions robust interpretation, but advocates should continue pressing for state constitutional protections that exceed federal minimums.

The Texas Constitution's protection of the right to a jury trial and other procedural guarantees may also support challenges to practices that systematically disadvantage defendants of color. State constitutional litigation offers the advantage of potentially more favorable precedent and the opportunity to develop independent state constitutional doctrine that does not depend on federal court interpretations.

Texas Racial Profiling Law

Texas law establishes requirements for law enforcement agencies regarding racial profiling. These provisions require agencies to adopt written policies prohibiting racial profiling, provide training on racial profiling, collect data on traffic stops including the race of individuals stopped, and compile annual reports on this data. Note that as of January 1, 2025, the former Articles 2.132 through 2.138

of the Texas Code of Criminal Procedure were repealed and reorganized. The racial profiling requirements are now codified in Chapter 2B of the Code of Criminal Procedure, specifically Articles 2B.0053 through 2B.0059.

While this law represents an important acknowledgment of the problem of racial profiling, its enforcement mechanisms are limited. The law does not create a private right of action, and sanctions for non-compliance are minimal. However, the data collected under this law can be invaluable for litigation and advocacy. The Houston Police Department data cited in this report, showing racial disparities in traffic stop outcomes, was collected pursuant to these requirements.

Advocates should use Texas Public Information Act requests to obtain racial profiling data from law enforcement agencies throughout the state. This data can support civil rights litigation, inform community advocacy, and provide the evidentiary foundation for legislative reform efforts. Where agencies fail to collect or report required data, complaints should be filed with appropriate oversight bodies.

The racial profiling law also establishes complaint procedures for individuals who believe they have been subjected to racial profiling. While these procedures have limitations, documented complaints create records that can support subsequent litigation and advocacy. Community organizations can play an important role in educating the public about complaint procedures and assisting individuals in navigating the process.

Texas Commission on Jail Standards

The Texas Commission on Jail Standards (TCJS) has authority to establish minimum standards for county jails and to inspect facilities for compliance. While the Commission's primary focus is on physical conditions and operational requirements rather than racial discrimination, its oversight function may provide leverage for addressing some aspects of the pretrial detention disparities documented in this report.

TCJS standards address issues such as classification of inmates, access to medical care, and conditions of confinement. Where pretrial detainees held because of inability to pay bail experience substandard conditions, complaints to TCJS may prompt inspections and corrective action. The Commission has authority to place non-compliant jails under remedial order and, in extreme cases, to prohibit confinement of inmates or order facility closure.

Advocates should explore opportunities to engage TCJS in addressing the conditions experienced by the large population of pretrial detainees, disproportionately people of color, held in Texas jails. While the Commission's mandate does not directly address racial discrimination, attention to the conditions of confinement can complement other strategies targeting the bail practices that produce discriminatory detention.

State Habeas Corpus

Texas Code of Criminal Procedure Article 11 provides for the writ of habeas corpus, allowing individuals to challenge unlawful detention or conviction. State habeas corpus proceedings may provide relief in cases where racial discrimination affected the outcome.

Grounds for habeas relief relevant to racial justice include ineffective assistance of counsel, where defense attorneys failed to raise available claims of racial discrimination; actual innocence, where wrongful convictions resulted from racially biased investigations or proceedings; and prosecutorial misconduct, including racially discriminatory use of peremptory challenges in jury selection. The Texas Court of Criminal Appeals has granted relief in cases involving Batson violations and other forms of racial discrimination.

Habeas corpus proceedings can also challenge ongoing pretrial detention. Where defendants are held solely because of inability to pay bail, without individualized assessment of their circumstances, habeas petitions may secure release pending trial. The success of bail reform litigation in Harris and Dallas Counties demonstrates the viability of challenging wealth-based detention through both habeas and civil rights mechanisms.

Litigation Strategies

Class Action Approaches

Class action litigation offers a powerful tool for challenging systemic discrimination that affects large numbers of individuals. The bail reform litigation in Harris County (ODonnell v. Harris County) demonstrates the potential of class actions to produce comprehensive reform.

Certification of a class requires plaintiffs to demonstrate numerosity, commonality, typicality, and adequacy of representation under Federal Rule of Civil Procedure 23 or its state equivalent. The widespread nature of the disparities documented in this report suggests that these requirements can be met in challenges to bail systems, policing practices, and other policies with racially disparate impacts across Texas jurisdictions.

The remedial phase of class action litigation presents both opportunities and challenges. Successful plaintiffs may obtain injunctive relief requiring systemic changes, such as the bail reform implemented in Harris County following O'Donnell. However, the sustainability of reforms depends on effective monitoring and enforcement. Courts may appoint special masters or monitors to oversee compliance, and plaintiffs' counsel must remain engaged throughout the remedial process to ensure that reforms are fully implemented.

Attorneys considering class action challenges should study the successes and difficulties experienced in prior bail reform litigation. The Harris County experience offers valuable lessons about effective remedial strategies, the importance of community engagement, and the potential for political backlash against reform efforts.

Impact Litigation

Impact litigation involves the strategic selection of cases with the potential to establish favorable precedent or produce systemic change. Civil rights organizations have long used this strategy to advance legal protections beyond what individual case-by-case litigation could achieve.

Texas is home to several organizations engaged in criminal justice impact litigation, including the Texas Civil Rights Project, ACLU of Texas, and Texas Fair Defense Project. Coordination among these organizations maximizes the impact of limited resources and ensures that cases are brought in the most favorable forums with the strongest possible factual records.

Amicus curiae briefs from civil rights organizations, academic experts, and other interested parties can strengthen impact litigation by providing courts with additional legal arguments, empirical evidence, and policy perspectives. The data compiled in this report may be useful in supporting amicus briefs in pending and future cases involving racial disparities in Texas criminal justice.

Impact litigation should be understood as one component of a broader advocacy strategy that includes legislative reform, community organizing, and public education. Legal victories can catalyze political change by demonstrating that current practices are unlawful, while political advocacy can create the conditions for legal success by shifting public opinion and encouraging judicial receptiveness to reform.

Individual Case Advocacy

Even in the absence of systemic litigation, individual defense attorneys can advance racial justice through effective representation of their clients. Every case presents opportunities to challenge discriminatory practices that might otherwise go unexamined.

Defense attorneys should routinely consider racial bias claims in their cases. This includes challenging the legality of stops and searches under the Fourth Amendment, raising Batson objections to discriminatory jury selection, presenting sentencing mitigation evidence regarding the impact of racial discrimination on their clients' lives, and preserving racial bias claims for appellate review even where trial courts are unreceptive.

The data in this report can support individual case advocacy. Statistics showing racial disparities in arrests, charging, and sentencing can be introduced through expert testimony or judicial notice to contextualize the circumstances of individual cases. While courts have been reluctant to find that general disparities prove discrimination in specific cases, such evidence can support inferences of bias when combined with case-specific facts.

Defense attorneys should also document patterns of discrimination they observe in their practices. This documentation can support subsequent systemic litigation, complaints to oversight bodies, and advocacy for reform. Individual case experiences, aggregated across many attorneys and cases, reveal the patterns that might not be visible in any single case.

Data-Driven Litigation

The statistics compiled in this report and similar sources provide the evidentiary foundation for civil rights litigation. Courts increasingly expect empirical support for claims of systemic discrimination, and effective advocacy requires the ability to present and explain statistical evidence.

Expert witnesses play a crucial role in data-driven litigation. Statisticians, criminologists, and other social scientists can analyze data on disparities, control for alternative explanations, and present findings in forms accessible to judges and juries. Attorneys pursuing racial justice litigation should develop relationships with experts who can support their cases.

The legal standards for statistical evidence vary across contexts. In employment discrimination cases, courts have developed detailed frameworks for assessing the probative value of statistical disparities. While criminal justice cases present different issues, advocates can draw on these frameworks in presenting evidence of racial disparities. Key considerations include sample size, statistical significance, the selection of comparison groups, and the adequacy of controls for legitimate, non-discriminatory factors.

Discovery in civil rights litigation can yield additional data to supplement publicly available sources. Attorneys should seek comprehensive data on arrests, charging decisions, bail determinations, plea offers, and sentences, disaggregated by race and controlled for relevant case characteristics. Resistance to such discovery requests may itself be evidence of awareness that the data would reveal discriminatory patterns.

Non-Litigation Legal Advocacy

Prosecutorial Accountability

Prosecutors exercise enormous discretion at every stage of criminal cases, from charging decisions to plea negotiations to sentencing recommendations. This discretion, exercised case by case across thousands of matters, produces the cumulative disparities documented in this report. Reforming prosecutorial practices is therefore essential to reducing racial disparities in outcomes.

The election of reform-minded prosecutors can transform local criminal justice systems. Voters have increasingly recognized the importance of prosecutorial elections, and campaigns focused on criminal justice reform have succeeded in Texas and across the country. District attorneys committed to reducing racial disparities can implement policies addressing charging, bail recommendations, plea practices, and sentencing advocacy that produce measurable improvements.

Conviction integrity units, established in some Texas prosecutor offices, review past convictions for potential wrongful convictions. Given the role of racial bias in wrongful convictions, these units can address some of the most serious injustices produced by discriminatory practices. Advocates should encourage the establishment and expansion of conviction integrity units and monitor their effectiveness in addressing racial disparities.

Open-file discovery policies, in which prosecutors share their evidence with defense attorneys early and completely, can reduce disparities by ensuring that defendants of color have access to the same information as other defendants. Where prosecutors withhold exculpatory evidence, defendants who cannot afford extensive investigation may be particularly disadvantaged. Open-file policies level this playing field.

Judicial Elections and Appointments

Judges play critical roles in perpetuating or reducing racial disparities. Their decisions on bail, evidentiary issues, jury selection challenges, sentencing, and countless other matters shape outcomes for individual defendants and establish precedents that affect entire systems.

Texas elects most of its judges, giving voters the opportunity to select judges committed to equal justice. Judicial campaigns have traditionally avoided substantive discussion of legal issues, but voters can assess candidates' records, endorsements, and stated commitments to fairness. Organizations that evaluate and endorse judicial candidates can help voters identify those most likely to address racial disparities.

Judicial education on implicit bias and racial disparities can improve decision-making even among judges committed to fairness. Continuing legal education programs, supported by empirical research on the effects of bias in judicial decision-making, can help judges recognize and counteract unconscious influences on their judgments. Bar associations and judicial organizations should prioritize such education.

Diversity on the bench may also contribute to more equitable outcomes. Research suggests that diverse judicial panels reach different decisions in some cases, and that the presence of judges from underrepresented backgrounds can influence deliberations even when they are in the minority. Efforts to increase diversity in the Texas judiciary should be supported as one component of comprehensive reform.

Grand Jury Reform

Grand juries play a gatekeeping function in the criminal justice system, deciding whether sufficient evidence exists to indict defendants for felony charges. Historically, grand jury practices in Texas and elsewhere have contributed to racial disparities through discriminatory selection of grand jurors and differential treatment of cases involving defendants or victims of different races.

Texas reformed its grand jury selection process in 2015, eliminating the "pick-a-pal" system that allowed judges to select grand jurors from among their personal acquaintances. This reform has likely increased diversity on grand juries, though comprehensive data on the effects of the change is not yet available. Advocates should monitor grand jury composition and advocate for continued reforms to ensure representative panels.

Grand jury proceedings remain secret, making it difficult to assess whether discrimination affects indictment decisions. However, patterns in indictment rates across different categories of cases may suggest disparities warranting further investigation. Researchers and advocates should seek to compile and analyze available data on grand jury outcomes to identify potential discrimination.

Public Records and Transparency

Transparency is essential to accountability. The disparities documented in this report are visible only because researchers, journalists, and advocates obtained and analyzed data from government agencies. Continued vigilance in seeking public records is necessary to monitor whether reforms are working and to identify emerging problems.

The Texas Public Information Act provides broad rights of access to government records, subject to certain exemptions. Advocates should use public information requests to obtain data on arrests, citations, bail decisions, charging, plea offers, sentences, and other criminal justice outcomes, disaggregated by race and other relevant characteristics. Where agencies resist disclosure, appeals to the Attorney General and litigation may be necessary to vindicate the public's right to know.

Journalism plays an essential role in bringing data on racial disparities to public attention. Investigative reports on criminal justice have prompted reforms in Texas and elsewhere. Advocates should cultivate relationships with journalists, provide them with data and analysis, and support their efforts to inform the public about the scope of racial disparities in the criminal justice system.

Public awareness of disparities can shift political dynamics in favor of reform. When voters understand that their criminal justice systems are producing racially discriminatory outcomes, they may demand change from their elected officials. Advocacy organizations should develop effective communications strategies to translate complex data into accessible narratives that motivate public engagement.

Federal Oversight Mechanisms

Department of Justice Civil Rights Division

The Civil Rights Division of the U.S. Department of Justice has authority to investigate and address civil rights violations by state and local governments, including law enforcement agencies and other criminal justice actors. This federal oversight can complement state and local advocacy, particularly where local political conditions impede reform.

The process for initiating DOJ involvement typically begins with complaints from individuals, organizations, or local officials documenting patterns of civil rights violations. Comprehensive documentation of the type provided in this report can support requests for federal investigation. Complaints should be directed to the Civil Rights Division's Criminal Section (for prosecutorial matters) or Special Litigation Section (for institutional reform).

DOJ investigations can result in findings letters identifying constitutional violations, consent decrees requiring comprehensive reforms, or in rare cases, criminal prosecutions of individual officers. The prospect of federal intervention may also encourage voluntary reforms by local agencies seeking to avoid the costs and oversight associated with consent decrees.

Federal enforcement priorities vary across presidential administrations. During periods of active federal civil rights enforcement, advocates should prioritize engagement with DOJ. During periods of reduced federal activity, advocates should continue building evidentiary records that can support

future investigations when political conditions change. The disparities documented in this report will persist regardless of short-term political fluctuations, and the case for federal intervention will remain compelling.

U.S. Commission on Civil Rights

The U.S. Commission on Civil Rights is an independent, bipartisan agency charged with investigating, reporting on, and making recommendations regarding civil rights issues. The Commission's Texas Advisory Committee conducts investigations and issues reports on civil rights matters specific to Texas.

The Commission has examined criminal justice disparities in various contexts and has issued reports documenting problems and recommending reforms. Advocates can engage the Texas Advisory Committee by providing testimony at public hearings, submitting written statements, and requesting that the Committee investigate specific issues. Commission reports, while not legally binding, can focus public attention on problems and provide authoritative support for reform advocacy.

The Commission's investigations can reach issues that may not be appropriate for litigation or that fall outside the enforcement authority of other agencies. Its broad mandate to study and report on civil rights issues allows it to examine systemic problems that cross jurisdictional boundaries and to recommend comprehensive solutions.

Congressional Oversight

Congress has oversight authority over federal agencies involved in criminal justice and can attach conditions to federal funding provided to state and local governments. Congressional attention to racial disparities in Texas criminal justice can support reform efforts through legislation, oversight hearings, and informal pressure on executive agencies.

Members of Congress representing Texas can be important allies in reform efforts. Advocates should provide them with documentation of disparities and specific requests for action, whether through legislation, oversight inquiries, or engagement with federal agencies. Congressional staff are often receptive to well-documented briefings on civil rights issues affecting their constituencies.

Federal funding for state and local criminal justice programs could be conditioned on compliance with civil rights requirements, data collection and reporting mandates, or demonstrated progress in reducing disparities. While such conditions are politically contentious, advocates should continue making the case for federal leverage over state and local practices that violate the constitutional rights of Texas residents.

12. Proposed Legal Reforms

The disparities documented throughout this report demand comprehensive policy reform. This section outlines specific legislative, administrative, and constitutional changes that can reduce racial inequities in the Texas criminal justice system. Each recommendation is tied to findings from earlier sections and draws on evidence from jurisdictions that have successfully implemented similar reforms.

I. Bail and Pretrial Reform

The data presented in this report reveal a wealth-based detention system that punishes poverty while claiming to serve public safety. With 76 percent of people in Texas jails legally innocent and merely awaiting trial, and Black defendants facing bail amounts nearly \$10,000 higher than their white counterparts, the current cash bail system operates as a mechanism of racial and economic subordination rather than a rational pretrial process. The consequences extend far beyond temporary detention. When individuals cannot afford bail, they lose jobs, housing, and custody of children, while simultaneously facing pressure to plead guilty to crimes they may not have committed simply to escape pretrial incarceration. This wealth-based system demands comprehensive legislative reform that centers the presumption of innocence and eliminates detention based solely on financial resources.

Texas should adopt a statutory presumption of release on personal recognizance bonds for all non-violent offenses and most misdemeanor charges. This presumption would require judges to affirmatively justify any imposition of monetary bail rather than defaulting to cash bonds as standard practice. Such a framework already exists in other jurisdictions and has demonstrated both fiscal responsibility and public safety success. New Jersey's Criminal Justice Reform Act, which took effect in January 2017, essentially eliminated cash bail in favor of a risk-based assessment system that considers community safety and other factors unrelated to ability to pay. The results have been remarkable. Between 2015 and 2018, the pretrial jail population fell by 44 percent, with roughly 3,900 fewer people detained compared to January 2015, and approximately 6,000 fewer than October 2012. Critically, this dramatic reduction in incarceration occurred without increases in

pretrial crime rates, while court appearance rates remained high at approximately 89 percent. These outcomes demonstrate that wealth-based detention is unnecessary for ensuring court compliance or protecting public safety.

When monetary bail is imposed, Texas law must mandate individualized ability-to-pay hearings with specific findings on the record. The current practice of setting standardized bail schedules without consideration of individual financial circumstances violates due process and equal protection guarantees. This principle was central to the landmark case *ODonnell v. Harris County*, where Chief Judge Lee H. Rosenthal concluded that Harris County's bail policy and practice violated the Equal Protection and Due Process Clauses of the United States Constitution. After three years of litigation, the parties reached a settlement resulting in a consent decree approved in November 2019, which represented the first federal court-supervised remedy governing bail practices. Under the consent decree, most people charged with misdemeanor crimes receive pretrial release on personal or unsecured bonds, with exceptions limited to family violence cases, repeat driving while intoxicated charges, and new offenses committed while already on bail or community supervision.

The Harris County experience provides compelling evidence for statewide reform. Independent monitoring reports document that the bail reforms have saved the county and its residents many millions of dollars, improved the lives of tens of thousands of people arrested for misdemeanors, and produced no increase in new offenses by those released pretrial. More than 80 percent of people arrested for misdemeanors since 2017 have spent two days or fewer in jail before release, compared to much longer detention periods under the previous cash bail system. The financial impact has been transformative. The total bond amounts set by courts fell from \$135 million in 2015 to just \$13 million in 2020, representing a tenfold reduction. Bail bond companies, which extracted over \$4.4 million from defendants in 2016, have earned less than \$1 million annually on low-level misdemeanor cases since 2018. These changes have also improved case outcomes, with defendants less likely to plead guilty, less likely to receive jail sentences, and more likely to receive shorter sentences when conviction does occur. Additionally, misdemeanor guilty pleas have declined overall, and fewer defendants reoffend within a year of arrest, even as more people are released into the community while awaiting trial.

If risk assessment tools are employed to inform pretrial decisions, they must be subject to mandatory and ongoing racial bias auditing with public transparency. While algorithmic tools are often promoted as objective alternatives to human discretion, research has repeatedly demonstrated that these instruments can perpetuate and even amplify existing racial disparities when the data used to train them reflects biased policing and prosecution patterns. Texas should require independent evaluation of any risk assessment tool before adoption, annual bias audits disaggregated by race and ethnicity, and immediate suspension of any tool that produces racially

disparate outcomes not explained by legally relevant factors. Furthermore, risk assessments should serve only as advisory information for judicial decision-making, never as determinative factors, and defendants must have meaningful opportunities to challenge risk scores and present individualized evidence of their reliability and community ties.

Beyond pretrial release standards, Texas needs comprehensive reform of the commercial bail bond industry. The current system allows private companies to profit from pretrial detention while creating perverse incentives that undermine both justice and public safety. Bail bondsmen charge non-refundable fees, typically 10 to 20 percent of the bond amount, which families can never recover even when charges are dismissed or the defendant is acquitted. This transfer of wealth from predominantly poor communities and communities of color to a private industry serves no legitimate governmental interest. Texas should prohibit bounty hunting practices, impose strict regulations on bond company fees and practices, require detailed public reporting of bail bond company revenues and practices, and consider whether the commercial bail industry should exist at all given its constitutional and practical deficiencies. Some jurisdictions have moved toward publicly administered bail systems or charitable bail funds that return money to defendants who comply with release conditions, models that both reduce financial exploitation and maintain incentives for court appearance.

Finally, robust data collection and public reporting requirements are essential to monitoring pretrial outcomes and ensuring accountability. Texas should mandate that all counties collect and publicly report detailed pretrial data, including bail amounts set disaggregated by race, ethnicity, and offense type; rates of pretrial release and detention by demographic categories; outcomes for people released pretrial, including court appearance rates and new arrest rates; and financial data on bail bond company revenues and practices. This information must be compiled at the state level and published in accessible formats to enable ongoing evaluation, research, and policy refinement. Without comprehensive data, policymakers cannot assess whether reforms are working or identify emerging problems. The pretrial stage is where the presumption of innocence should have its greatest force, yet current Texas practice inverts this constitutional principle by treating inability to pay as evidence of dangerousness or flight risk. Comprehensive bail reform would restore the presumption of innocence to its rightful place at the foundation of criminal procedure.

II. Policing Reform

The traffic stop and search data presented in this report expose profound racial disparities in the initial moments of criminal justice system contact. In Houston, Black individuals are arrested following traffic stops at nearly double the rate of white individuals, 4.0 percent compared to 2.2 percent, despite police finding contraband more often when searching white individuals. This

pattern reveals what researchers call "empirical futility," where officers disproportionately subject Black and Latino individuals to intrusive searches that yield lower hit rates than searches of white individuals, suggesting decisions driven by racial bias rather than legitimate law enforcement purposes. When the most common pathway to incarceration in Harris County is possession of less than one gram of a controlled substance, and when these low-level charges emerge disproportionately from pretextual traffic stops in communities of color, the entire architecture of racialized policing comes into focus. Meaningful reform requires addressing both the data collection systems that render this discrimination visible and the substantive practices that produce it.

Texas has required law enforcement agencies to collect racial profiling data since 2001, but significant gaps remain in both what information is gathered and how it is analyzed. The law was recently reorganized into Chapter 2B of the Code of Criminal Procedure, effective January 1, 2025, consolidating previously scattered provisions into a unified framework titled "Law Enforcement Interactions with Public." The reorganized statute prohibits racial profiling, defines it as law enforcement action based on an individual's race, ethnicity, or national origin rather than behavior or information identifying criminal activity, and requires each law enforcement agency to adopt detailed written policies. However, the current reporting requirements focus primarily on traffic stops and provide insufficient data on searches, contraband recovery, and post-stop outcomes. Texas should strengthen these requirements by mandating collection of detailed information on the stated reason for each stop, whether a search was conducted and under what legal basis, whether consent was requested and obtained, what contraband or evidence was discovered, and what enforcement action was taken, including warnings, citations, and arrests. This enhanced data collection should extend beyond traffic stops to include pedestrian stops, which often raise similar concerns about pretextual enforcement and racial profiling.

Consent searches represent a particularly problematic practice that requires immediate reform. The data show that officers disproportionately request consent to search vehicles operated by Black and Latino drivers, yet these searches yield contraband at lower rates than searches of white drivers, indicating that officers are not exercising this discretionary power based on legitimate investigative grounds. Moreover, the concept of voluntary consent in the context of a police encounter is fundamentally compromised by the inherent coercion of the situation. When an armed officer asks for permission to search, many individuals believe they have no right to refuse or fear that refusal will result in negative consequences. Texas should require that all consent search requests be documented with specific written consent forms that clearly advise individuals of their right to refuse, that require officers to read this advisement aloud before requesting consent, and that allow individuals to limit the scope of any consent granted. Additionally, officers should be required to

record all consent search requests and responses using body-worn cameras, and agencies should regularly audit consent search data to identify officers who disproportionately request consent searches or whose consent searches yield low hit rates.

The practice of pretextual traffic stops for minor equipment violations must be curtailed through legislative action. When officers can initiate stops for trivial violations such as air fresheners hanging from rearview mirrors, broken taillights, or expired registration stickers, they possess nearly unlimited discretion to stop any vehicle at any time, discretion that data consistently show is exercised in racially discriminatory patterns. Several jurisdictions have recently enacted reforms that provide models for Texas. In March 2021, Virginia became the first state to prohibit low-level traffic stops that disproportionately affect people of color and are often used as pretexts to search for drugs. The Virginia law, which responded to the racial justice movement following George Floyd's murder, reclassified numerous violations as secondary offenses that cannot serve as the sole basis for a traffic stop. Officers cannot stop vehicles based solely on marijuana odor, faulty or loud muffler systems, items hanging from rearview mirrors, tinted windows exceeding allowable limits, broken taillights, or expired inspection or registration stickers until the first day of the fourth month after expiration. Importantly, the law specifies that no evidence arising from unlawful stops is admissible in court and prohibits localities from converting secondary offenses to primary offenses through local ordinances.

Philadelphia implemented similar reforms through its Driving Equality Act, effective March 2022, which reclassified eight minor violations as secondary offenses for which police cannot initiate stops. Data had shown that Black drivers, comprising approximately 43 percent of the population, accounted for 72 percent of traffic stops. After implementation, stops of Black drivers for targeted violations dropped by roughly half, and the law survived legal challenge. Texas should adopt similar legislation that restricts traffic stops to violations that genuinely implicate public safety, removes officer discretion to initiate stops for minor equipment issues, and requires data collection on what violations prompt stops to enable ongoing monitoring of enforcement patterns.

Citation in lieu of arrest represents another critical reform that can reduce the racially disparate impact of police encounters. Current Texas law grants officers broad discretion to arrest for Class A and Class B misdemeanors punishable only by fine, even when citation would adequately serve law enforcement purposes. This discretion operates as another site of racial disparity, with officers more likely to arrest rather than cite Black individuals for identical offenses. Texas should mandate citation in lieu of arrest for all non-violent misdemeanors and fine-only offenses unless specific, articulable circumstances justify custodial arrest for reasons of safety or flight risk. Officers should be required to document on the record any decision to arrest rather than cite, and agencies should track and publicly report arrest-versus-citation decisions disaggregated by offense type and

demographic characteristics. Such a reform would substantially reduce jail admissions, decrease the collateral consequences that flow from even brief incarceration, and limit opportunities for racial bias to influence enforcement decisions. Given that Harris County's leading cause of jail nights is possession of less than one gram of a controlled substance, and that such charges often arise from traffic stops and searches, converting arrests to citations for these offenses would meaningfully reduce both overall incarceration and racial disparities in detention.

Independent oversight mechanisms are essential to ensuring that reforms translate into changed practices rather than merely revised policies. Texas should establish civilian review boards with meaningful investigatory and disciplinary authority, require regular public reporting of traffic stop and search data with analysis of racial disparities, mandate early intervention systems that identify officers with patterns of racially disparate stops or searches, and create whistleblower protections for officers who report discriminatory practices. These oversight structures must include community members from neighborhoods most affected by aggressive policing, possess subpoena power and access to complete law enforcement records, and have authority to recommend discipline that police leadership and civil service systems cannot simply ignore. Transparency and accountability cannot rely solely on law enforcement agencies investigating themselves. External oversight, combined with robust data collection and analysis, creates the conditions for identifying problems, evaluating reforms, and maintaining pressure for continued improvement. The goal of policing reform is not to eliminate all law enforcement activity but to ensure that police power is exercised without racial discrimination, that stops and searches are grounded in legitimate law enforcement purposes rather than pretextual justifications, and that constitutional principles of equal protection and freedom from unreasonable searches apply equally to all Texans regardless of race or neighborhood.

III. Drug Policy Reform

The profound racial disparities in Texas's enforcement of drug laws, particularly for marijuana offenses, demand comprehensive policy reform. As documented earlier in this report, Texas led the nation with approximately 70,000 marijuana possession arrests in 2018, with Black Texans facing arrest at 2.6 times the rate of white Texans despite similar usage rates across racial groups. Moreover, 97 percent of these arrests involved simple possession rather than distribution, suggesting that enforcement resources are being directed toward low-level offenses that disproportionately harm communities of color. The legacy of the War on Drugs continues to shape these outcomes, as Black people accounted for 81 percent of the increase in Texas's prison population for drug offenses during that era. Addressing these inequities requires a multi-pronged

approach that includes decriminalization, legalization with equity provisions, reclassification of offenses, mandatory treatment diversion, and retroactive relief for those already caught in the system.

Decriminalization represents the most immediate and achievable reform pathway. Rather than treating marijuana possession as a criminal offense punishable by arrest, jail time, and a permanent criminal record, decriminalization would reduce possession of small amounts to a civil infraction comparable to a traffic ticket. This shift would eliminate the collateral consequences that flow from criminal convictions, including barriers to employment, housing, education, and professional licensing. The model has been tested in numerous jurisdictions, though implementation has varied significantly. Oregon voters approved Measure 110 in 2020, which decriminalized possession of small amounts of all drugs and redirected enforcement resources toward treatment services. While Oregon recriminalized drug possession in September 2024 following political pressure, the initial measure demonstrated the feasibility of treating drug use as a public health issue rather than a criminal justice matter. Research on the measure's impact found substantial reductions in felony drug arrests. A RAND Corporation study found that Measure 110 reduced drug possession arrest rates by 75.6 percent for Black individuals and 66.2 percent for White individuals, with the reduction being statistically significantly larger for Black and Hispanic individuals, thereby narrowing racial disparities in drug enforcement. Texas should pursue marijuana decriminalization as an interim step, reducing possession of personal-use amounts to a civil violation with a modest fine and no criminal record.

Full legalization with robust equity provisions represents a more comprehensive long-term solution. As of 2025, 24 states and the District of Columbia have legalized recreational marijuana, demonstrating both the political viability and the practical implementation of regulated cannabis markets. However, legalization alone does not address the racial inequities created by decades of discriminatory enforcement. Illinois's 2020 Cannabis Regulation and Tax Act offers a model, with social equity provisions that prioritize licensing for individuals with prior cannabis convictions or from disproportionately impacted areas, provide financial assistance for qualifying applicants, and dedicate a portion of tax revenue to affected communities. Texas should incorporate similar provisions into any legalization framework, prioritizing licensing and economic opportunities for individuals and communities that bore the brunt of marijuana prohibition.

Beyond marijuana, Texas should reclassify low-level drug possession offenses more broadly. The current framework treats simple possession of controlled substances as serious criminal offenses carrying substantial prison sentences, despite the well-documented racial disparities in charging and sentencing. Reclassification could reduce many possession offenses from felonies to misdemeanors, or from misdemeanors to violations, with corresponding reductions in maximum

penalties. This approach acknowledges that drug use is primarily a public health concern rather than a threat to public safety warranting incarceration. Reclassification should be paired with statutory presumptions against incarceration for first-time possession offenses, directing courts toward community-based sanctions except in cases involving aggravating factors. Such reforms would reduce the prison population, decrease racial disparities in incarceration, and allow the criminal justice system to focus resources on serious violent offenses and large-scale drug trafficking operations.

Mandatory diversion to treatment for first-time drug possession offenses offers another evidence-based reform strategy. Rather than prosecuting individuals for their first possession offense, prosecutors would be required to offer diversion to substance abuse treatment, mental health services, or other community-based interventions. Successful completion of the diversion program would result in dismissal of charges, while failure to complete the program would allow prosecution to proceed. This approach recognizes that criminal prosecution and incarceration are ineffective mechanisms for addressing substance use disorders, which are better treated through medical and therapeutic interventions. Diversion programs have been implemented successfully in numerous jurisdictions, consistently demonstrating lower recidivism rates compared to traditional prosecution and better long-term outcomes for participants. To ensure these programs do not perpetuate racial disparities, Texas must establish clear statutory eligibility criteria, prohibit prosecutorial discretion that could introduce bias, and mandate data collection on participation rates by race and ethnicity. Additionally, diversion programs must be adequately funded to ensure availability across all communities, not just those with resources to support such initiatives privately.

Retroactive relief represents a moral and practical imperative. Thousands of Texans remain incarcerated, on probation, or burdened with criminal records for conduct that reform would render non-criminal or substantially less serious. Equity demands that these individuals receive the benefit of reformed policies, not just those arrested after reform takes effect. Texas should implement automatic expungement procedures for marijuana possession convictions, following models established in states like Illinois, New York, and Virginia. Illinois's automatic expungement system has processed approximately 800,000 marijuana-related records without requiring individuals to petition courts or navigate complex legal procedures. New York's 2021 legalization law provides automatic expungement for convictions involving possession up to 16 ounces or sale up to 25 grams, while Virginia State Police have sealed nearly 400,000 marijuana-related criminal records. Automatic processes are essential because they eliminate the resource barriers, legal knowledge requirements, and bureaucratic obstacles that prevent many individuals from seeking relief through petition-based systems. Texas should also establish resentencing procedures for individuals currently incarcerated for offenses that would be decriminalized or reduced under reform. Courts

should have authority to reduce sentences to reflect current law, with a presumption of immediate release for individuals serving time solely for simple possession. These retroactive provisions would provide immediate relief to those most harmed by current policy while demonstrating the state's commitment to addressing past injustices.

IV. Sentencing Reform

The stark sentencing disparities documented throughout this report reveal that Texas's criminal justice system imposes substantially harsher punishment on Black defendants than on similarly situated white defendants. Federal data shows that Black males receive sentences 13.4 percent longer than white males, while federal prosecutors file mandatory minimum charges 65 percent more often against Black defendants. Perhaps most troubling, research examining sentencing reforms across 12 states between 2010 and 2020, including Texas, found that these efforts had "negligible impacts" on reducing racial disparities in imprisonment. This pattern suggests that incremental tinkering with sentencing statutes is insufficient to address deeply embedded disparities. Instead, Texas needs comprehensive structural reforms that limit discretion at points where bias enters the system, increase transparency and accountability in charging and sentencing decisions, prohibit reliance on factors that correlate with race, and create institutional mechanisms for ongoing monitoring and correction of disparities.

Reducing or eliminating mandatory minimum sentences for non-violent offenses would remove one of the most significant sources of racial disparity in the system. Research has repeatedly demonstrated that mandatory minimums are a primary driver of sentencing disparities, with prosecutors exercising discretion about whether to file charges carrying mandatory minimums in racially disparate ways. Federal data shows prosecutors file such charges 65 percent more often against Black defendants than white defendants, even after controlling for offense severity and criminal history. Once a mandatory minimum charge is filed, judges lose the ability to consider individual circumstances or impose proportionate sentences, cementing whatever bias existed in the initial charging decision. The federal experience following *United States v. Booker*, which increased judicial discretion by making sentencing guidelines advisory rather than mandatory, demonstrates that enhanced discretion can mitigate rather than exacerbate disparities when mandatory minimums do not constrain judges. Texas should repeal mandatory minimum sentences for drug offenses and non-violent property crimes, replacing them with advisory sentencing ranges that allow judges to consider individual circumstances while maintaining general proportionality. For offenses where the legislature determines that mandatory minimums remain necessary, statutory language should require prosecutors to articulate in writing the specific factors supporting the decision to file mandatory minimum charges, creating a record that can be reviewed for patterns of disparate treatment.

Establishing a Texas Sentencing Commission with an explicit mandate to analyze and address racial disparities would create institutional capacity for ongoing monitoring and reform. Currently, more than 20 states maintain sentencing commissions, including Alabama, Connecticut, Kansas, Maryland, Minnesota, North Carolina, Oregon, Pennsylvania, Utah, Virginia, and Washington. These bodies typically collect and analyze sentencing data, develop sentencing guidelines, and make recommendations to legislatures about sentencing policy. Texas lacks such an institution, limiting the state's ability to identify emerging disparities, evaluate the impact of reforms, or develop evidence-based sentencing policy. A Texas Sentencing Commission should be charged with collecting comprehensive data on arrests, charges, plea offers, convictions, and sentences, disaggregated by race, ethnicity, county, and offense type. The commission should publish annual reports analyzing racial disparities at each decision point in the criminal justice process, identifying jurisdictions and offense categories where disparities are most pronounced. Unlike purely advisory bodies, the commission should have authority to promulgate presumptive sentencing guidelines that judges must follow absent articulated reasons for departure, creating both uniformity and accountability. The commission's composition should include judges, prosecutors, defense attorneys, formerly incarcerated individuals, community advocates, and academic experts, ensuring diverse perspectives inform sentencing policy.

Texas should prohibit consideration of sentencing factors that correlate strongly with race but have limited legitimate relevance to culpability or public safety. Factors such as employment history, educational attainment, family structure, and neighborhood of residence are regularly considered in sentencing decisions, particularly when judges evaluate a defendant's potential for rehabilitation or ties to the community. However, these factors correlate strongly with race due to structural inequalities in education, employment, and housing that are themselves products of historical and ongoing discrimination. Allowing these factors to influence sentences effectively punishes individuals for social and economic disadvantages rather than for their criminal conduct. Several jurisdictions have begun addressing this issue through various mechanisms. Minnesota's Fourth Judicial District reviewed its pretrial risk assessment instrument in 2023-2024 and removed indicators that did not predict pretrial offending or failure to appear but were correlated with race, adopting a revised Minnesota Pretrial Assessment Tool (MNPAT-R) effective January 2024. New York City similarly revised its release assessment to reduce racial disparities in detention. California's Racial Justice Act allows defendants to challenge convictions or sentences by proving that attorneys, police officers, jurors, judges, or expert witnesses exhibited bias related to race, ethnicity, or national origin. Texas should adopt legislation prohibiting courts from considering employment status, educational attainment, or neighborhood characteristics as aggravating factors in sentencing, while preserving defendants' ability to present such evidence as mitigating factors if they choose. The legislature should direct the Sentencing Commission to identify additional factors that correlate with race and recommend further restrictions.

Prosecutorial charging reform and enhanced transparency represent essential components of any comprehensive effort to address sentencing disparities. Prosecutors wield enormous discretion in deciding what charges to file, whether to offer plea agreements, and what sentences to recommend. This discretion operates largely invisibly, with minimal oversight or accountability. Research demonstrates that this discretionary power contributes significantly to racial disparities in sentencing outcomes. Federal studies show that sentencing differences can be attributed largely to the initial decision of whether to seek incarceration at all, rather than the length of prison terms once incarceration is imposed, suggesting that prosecutorial charging and plea bargaining decisions are primary drivers of disparate outcomes. Texas should require prosecutors to collect and publish data on charging decisions, plea offers, and sentencing recommendations, disaggregated by defendant race, ethnicity, and offense type. District attorney offices should be required to establish written policies governing charging decisions for common offense categories, creating internal consistency and reducing opportunities for bias to influence individual decisions. The state should mandate regular racial impact assessments of prosecutorial practices, identifying offices and prosecutors whose charging patterns produce unexplained racial disparities. While prosecutorial discretion serves important functions in the justice system, it must be exercised within frameworks that promote consistency, transparency, and accountability.

Parole and release reforms would address racial disparities not only in who enters prison but also in how long individuals remain incarcerated. Studies of parole decision-making reveal racial disparities comparable to those found in sentencing, with Black individuals less likely to be granted parole than similarly situated white individuals. Texas should expand earned time credit programs, allowing incarcerated individuals to reduce their sentences through participation in educational programs, vocational training, substance abuse treatment, and other constructive activities. These credits should be calculated automatically based on program completion, rather than through discretionary decisions by parole boards that may introduce bias. The state should also eliminate or sharply restrict the practice of revoking parole for technical violations that do not involve new criminal conduct. Research shows that technical violation revocations contribute substantially to prison populations while providing minimal public safety benefit, and that revocation decisions are made in racially disparate ways. California's Proposition 47, enacted in 2014, provides an instructive example of how comprehensive sentencing reform can reduce both incarceration levels and racial disparities. The measure reclassified numerous drug and property offenses from felonies to misdemeanors, producing significant reductions in the criminal justice population. Research on Proposition 47's impact found that it narrowed racial disparities in arrests and bookings, with the Black-white gap in arrests shrinking by 5.9 percent and the gap in bookings narrowing by 8.2 percent. The measure also reduced the Black-white incarceration gap from about 4.5 percentage points to 2.8 percentage points, a decrease of approximately 36 percent. While significant disparities persist in California, Proposition 47 demonstrates that well-designed sentencing reforms

can achieve measurable reductions in racial inequities. Texas should study California's experience and other state reforms carefully, learning from both successes and shortcomings to design policies that meaningfully advance racial justice in sentencing.

V. Death Penalty Reform

The data presented in this report paint a stark picture of racial disparity in Texas capital punishment. With Black individuals comprising 47.6 percent of death row despite representing only 13 percent of the state's population, and with 15 of the last 21 people sentenced to death in Harris County being Black men, the evidence demands a comprehensive response. The 2019 capital sentence of Ronald Haskell marked the first time a white defendant had received a death sentence in Harris County since 2004, underscoring the extraordinary racial skew in the application of this ultimate punishment. These disparities are not random aberrations but rather reflect systemic patterns documented in landmark research such as the Baldus study, which found that defendants who killed white victims were 4.3 times more likely to receive death sentences than those who killed Black victims. Given the irreversible nature of execution and the persistence of these racial disparities over decades, Texas must undertake fundamental reforms to its capital punishment system.

The first and most urgent step is to impose a moratorium on all executions pending a comprehensive, independent study of racial disparities in the state's death penalty system. Illinois provides a precedent: after discovering that 13 death row prisoners had been exonerated while only 12 had been executed, Governor Ryan declared a moratorium in 2000, appointed a commission that produced 85 reform recommendations, commuted all death sentences in 2003, and the state ultimately abolished capital punishment in 2011. Texas should follow this model by establishing an independent commission with subpoena power to examine every aspect of its capital punishment system, from charging decisions through jury selection, trial proceedings, and appellate review. The commission should have specific authority to analyze racial patterns in death penalty cases, including disparities based on the race of both defendants and victims.

During the moratorium period, Texas should implement structural reforms to address the mechanisms through which racial bias enters capital proceedings. Jury selection in capital cases requires particular attention, given research demonstrating that all-white or predominantly white juries are significantly more likely to impose death sentences in cases involving Black defendants. Texas should require that capital juries reflect the racial composition of the community, following models developed in some jurisdictions that prohibit peremptory strikes used in racially discriminatory patterns. The state should also expand discovery requirements in capital cases, mandating that prosecutors disclose all evidence related to potential racial bias in their charging

decisions, including data on capital charging rates by race of defendant and victim. Capital defense teams must receive funding parity with prosecution, including adequate resources for mitigation specialists, investigators, and expert witnesses who can identify and present evidence of racial bias in the criminal justice system. These structural changes address the asymmetries in resources and information that allow racial disparities to persist even when individual actors believe they are making race-neutral decisions.

Prosecutorial discretion in seeking the death penalty represents perhaps the most significant point at which racial disparities enter the system. The decision whether to charge a case capitally rests almost entirely with individual district attorneys, whose choices are rarely subject to external review or statewide standards. Texas should establish mandatory guidelines for capital charging decisions that include consideration of racial disparities and require prosecutors to document their analysis in writing. A statewide review committee, composed of prosecutors, defense attorneys, judges, and community members, should examine all proposed capital charges to ensure consistency and identify potential racial bias before cases proceed to trial. This committee should have access to comprehensive data on charging patterns across the state, broken down by race of defendant, race of victim, and county. District attorneys should be required to provide a written justification for any charging decision that deviates from statistical norms, explaining why the particular case warrants capital treatment. Such review mechanisms would not eliminate prosecutorial discretion but would subject it to the kind of scrutiny necessary to identify and prevent racially disparate outcomes.

Even with these reforms in place, the fundamental question remains whether capital punishment can ever be administered in a manner free from racial bias. The weight of historical and empirical evidence suggests it cannot. From its origins in public lynchings through its modern incarnation in execution chambers, the death penalty in the United States has been inextricably linked with racial oppression. The racial disparities documented in Texas are not unique but rather mirror patterns found throughout the South and across the nation. Virginia's abolition of capital punishment in 2021 demonstrates that even states with long histories of executions can change course. Virginia, which had executed more people since colonial times than any other state, became the 23rd state and the first in the South to abolish the death penalty when Governor Ralph Northam signed legislation in March 2021. Governor Northam explicitly cited the death penalty's disproportionate racial impact, noting that of the 377 individuals Virginia executed for murder in the 20th century, 296 were Black. As of 2025, 23 states have abolished capital punishment, while four additional states maintain moratoriums on executions.

Texas should recognize that abolition represents the only certain path to eliminating racial bias from its capital punishment system. No amount of reform can completely eliminate the discretionary human judgments at every stage of capital proceedings, from police investigation

through prosecutorial charging, jury selection, trial, and appellate review. Each of these decision points creates opportunities for conscious or unconscious racial bias to influence outcomes. The racial disparities in Texas death sentences are not the result of a few flawed cases but rather emerge from the cumulative effect of small biases at multiple stages of the process. Eliminating the death penalty removes the possibility that the state will execute someone based on the race of the defendant or victim. It ensures that irreversible racial bias cannot occur. While life without parole maintains severe punishment for the most serious crimes, it preserves the possibility of correcting errors and addresses racial disparities in a way that execution, by its very nature, cannot. Texas should join the growing number of states that have concluded capital punishment is incompatible with equal justice and begin the process of abolishing the death penalty entirely.

VI. Juvenile Justice Reform

The racial disparities documented in Texas juvenile justice are equally troubling and demand comprehensive reform. Black youth comprise only 11 percent of the juvenile population but account for 29 percent of referrals to the Texas Juvenile Justice Department, a disparity ratio of more than 2.6 to one. The overrepresentation intensifies at each successive stage of the system, culminating in a facility population that is 76 percent Black and Hispanic. These state-level statistics mirror national trends showing that Black youth are 5.6 times as likely as white youth to be placed in juvenile facilities, reaching an all-time high in recent years. Perhaps most significantly, the report documents that youth of color are offered diversion programs less frequently than white youth, even when charged with similar offenses. This pattern suggests that racial disparities result not merely from different rates of offending but from systemically different treatment of young people based on their race. Reforming Texas juvenile justice requires addressing both the overall scale of youth incarceration and the racial inequities embedded throughout the system.

Texas should begin by adopting measures to reduce the number of young people entering secure detention facilities. New York's Raise the Age Act, signed into law in April 2017, provides a proven model for such reform. The legislation raised the age of criminal responsibility from 16 to 18, ensuring that 16- and 17-year-olds are processed through the juvenile justice system rather than adult criminal courts. The law took effect in stages, applying to 16-year-olds beginning October 1, 2018, and to 17-year-olds beginning October 1, 2019. It prohibits the placement of anyone under 18 in adult jails or prisons, instead requiring that young people be held in specialized juvenile detention facilities certified by state authorities. The legislation also created new Youth Parts in Supreme Court, presided over by judges who also serve in Family Court, to hear cases involving adolescent offenders. Texas should follow this approach by raising the minimum age of criminal

responsibility and establishing a strong presumption against secure detention for youth, particularly for nonviolent offenses. Any decision to place a young person in a secure facility should require written findings explaining why less restrictive alternatives are insufficient.

Expanding access to diversion programs represents a critical tool for addressing racial disparities at the front end of the juvenile justice system. Currently, the decision whether to offer diversion rests largely with individual prosecutors and probation officers, whose discretionary judgments can reflect conscious or unconscious racial bias. Texas should mandate that diversion be considered for all first-time offenders and most nonviolent offenses, with written justification required whenever prosecutors decline to offer diversion to an eligible youth. The state should establish clear criteria for diversion eligibility that focus on the nature of the offense and the youth's prior record rather than subjective assessments of character or family circumstances, which research shows are more likely to disadvantage youth of color. Independent review boards should examine diversion decisions on a regular basis to identify patterns of racial disparity and require corrective action when disparities exceed specified thresholds. Texas should also invest in expanding the capacity and range of diversion programs available, including restorative justice programs that bring together young people, victims, and community members to address harm without formal court processing. Adequate funding for diversion programs is essential to ensure they are available in all communities, not just affluent areas with robust social service infrastructure.

The school-to-prison pipeline represents a particularly pernicious contributor to racial disparities in juvenile justice. In Texas and nationwide, students of color are disproportionately arrested at school for minor disciplinary infractions that would result in in-school consequences for white students. Police officers stationed in schools, often called school resource officers, frequently treat adolescent misbehavior as criminal conduct requiring arrest rather than as disciplinary matters appropriately handled by educators. Zero-tolerance policies that mandate suspension, expulsion, or arrest for specified behaviors have been shown to push students out of school and into the justice system without improving school safety. Texas should strictly limit the circumstances under which school personnel may involve law enforcement in student discipline, prohibiting arrests for minor offenses that do not threaten safety. The state should carefully reconsider the role and training of school resource officers, ensuring that any officers assigned to schools are trained in adolescent development and de-escalation and operate under clear protocols that prioritize keeping students in school. School districts should eliminate zero-tolerance policies in favor of graduated disciplinary responses that allow administrators to consider context and individual circumstances. Alternative approaches such as restorative justice circles and social-emotional learning programs have demonstrated success in reducing both disciplinary referrals and racial disparities without compromising school safety.

For young people who do become involved in the juvenile justice system, Texas should significantly expand opportunities for record sealing and expungement. A juvenile record can create barriers to education, employment, and housing that persist long after the young person has completed any sentence and moved beyond youthful offending. These collateral consequences disproportionately affect youth of color, compounding the initial racial disparities in justice system involvement. Texas should provide for automatic sealing of juvenile records upon successful completion of probation or other disposition, without requiring the young person to petition the court. For youth who complete their dispositions without further offenses, records should be eligible for expungement after a specified period, permanently removing the adjudication from all public and most government records. The state should limit the offenses excluded from sealing or expungement, recognizing that even serious juvenile offenses may not reflect a young person's long-term trajectory. Accessible sealing and expungement ensure that youthful mistakes do not become lifetime barriers to success.

Ultimately, reducing racial disparities in juvenile justice requires investing in community-based alternatives to incarceration that address the underlying needs of young people without removing them from their families and communities. California closed all state juvenile facilities in 2023, transferring responsibility to counties providing wraparound services and community-based programs. Missouri's model of small therapeutic facilities near youths' homes achieves dramatically better outcomes, with only 8.5 percent of released youth sentenced to adult prison within three years compared to over 20 percent in comparable states. Texas should invest in similar community-based approaches that keep young people close to their families while providing intensive services, recognizing that such models both reduce incarceration and improve long-term outcomes.

VII. Voting Rights Restoration

Texas has erected formidable barriers between its citizens and the ballot box based on prior criminal convictions. As documented in this report, over 479,000 Texans cannot vote due to felony convictions, making Texas second only to Florida in the sheer number of disenfranchised citizens. Most troubling is that 327,000 of these Texans are barred from voting while on felony probation or parole, long after they have been released from incarceration and returned to their communities. This policy dates back to 1845 and has been sustained through every generation since, functioning as a mechanism for political exclusion that falls disproportionately on communities of color. Black Texans are 2.5 times as likely to lose their voting rights due to a felony conviction compared to white Texans, while Latino Texans are 1.2 times as likely, creating a racially stratified system of civic participation that undermines the legitimacy of Texas democracy itself.

The most urgent reform would be automatic restoration of voting rights upon release from incarceration, eliminating the current practice of continuing disenfranchisement during the probation and parole period. This single change would restore the franchise to 327,000 Texans who have completed their prison sentences and rejoined society, but who remain excluded from civic life due to ongoing supervision requirements that can last for years or even decades. Twenty-two states already automatically restore voting rights upon release from prison, demonstrating that this reform is both feasible and increasingly mainstream. These states include jurisdictions as politically diverse as Hawaii, Illinois, Indiana, Massachusetts, Michigan, Montana, New Hampshire, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, and Utah, showing that voting rights restoration transcends partisan divisions and reflects a fundamental commitment to democratic inclusion.

Recent reforms in other states demonstrate the political momentum behind voting rights restoration. In 2018, Florida voters passed Amendment 4 by a decisive 64.55 percent margin, restoring voting rights to an estimated 1.4 million Floridians with felony convictions upon completion of their sentences, excluding only those convicted of murder or sexual offenses. Although the Florida legislature subsequently undermined the amendment by requiring payment of all fines and fees before restoration, and although implementation has been marred by confusion and even criminal prosecutions of people who attempted to vote based on honest misunderstanding of their eligibility, the overwhelming popular support for Amendment 4 revealed a broad public consensus that permanent disenfranchisement is fundamentally unjust. In Virginia, Governor Ralph Northam used executive authority to restore voting rights to approximately 69,000 people upon their release from prison in 2021, even if they remained on community supervision. In Iowa, Governor Kim Reynolds signed an executive order in August 2020 that automatically restored voting rights to tens of thousands of Iowans with felony convictions upon completion of their sentences, transforming Iowa from the only state with permanent disenfranchisement to one with automatic restoration for most offenses. Minnesota enacted automatic restoration upon release in 2023, as did New Mexico, showing that reform continues to spread across the country and across party lines.

Beyond the fundamental policy change of automatic restoration upon release, Texas must adopt procedural reforms to ensure that restoration is not merely a technical right but a practical reality. Upon release from incarceration, individuals should be automatically registered to vote and provided with clear written notification of their restored rights, their polling location, and instructions for updating their voter registration if they have changed addresses. Currently, many people with prior convictions avoid voting out of fear that they remain ineligible or that attempting to vote could result in criminal prosecution, a fear reinforced by the recent arrests in Florida of

individuals who registered to vote based on misunderstanding of complex eligibility rules. Texas must ensure that voting rights restoration is self-executing and transparent, with the state bearing the burden of facilitating registration rather than placing obstacles in the path of returning citizens.

Texas should also immediately end the aggressive prosecution of voting errors by people with prior convictions absent clear proof of intentional fraud. In recent years, several states have prosecuted individuals who attempted to vote while technically ineligible, even when the evidence showed they genuinely believed they had the right to vote, did not attempt to conceal their identity or status, and had received no clear guidance about their eligibility. These prosecutions serve no legitimate purpose, as there is no evidence of coordinated fraud or attempts to manipulate election outcomes. Instead, they function as intimidation, deterring not only those who might be ineligible but also countless eligible voters with past convictions who fear that any mistake could result in criminal charges. The state should adopt a presumption that voting by someone with a prior conviction who has not received clear notice of ineligibility is a mistake rather than a crime, and should respond through voter education and registration correction rather than prosecution.

In the longer term, Texas should consider whether to join Maine, Vermont, and the District of Columbia as jurisdictions that permit voting while incarcerated. These jurisdictions have allowed incarcerated people to vote throughout their history, based on state constitutional provisions that guarantee voting rights to all citizens. Research shows that only about six to ten percent of eligible incarcerated voters in Maine and Vermont actually cast ballots, dispelling fears that prison voting would somehow swing elections or concentrate political power in communities that house correctional facilities. The low turnout reflects barriers to voting from prison, including lack of information, difficulty obtaining and returning absentee ballots, and the practical challenges of civic engagement while incarcerated. Nevertheless, the principle matters. Allowing incarcerated people to vote recognizes their continued membership in the political community, maintains civic connections that can support successful reentry, and ensures that the voices of those most directly affected by criminal justice policy are heard in debates about reform. Several other states are now considering similar policies, and Texas should study the Maine and Vermont experience as it contemplates the full restoration of democratic rights.

The case for voting rights restoration rests on both principle and pragmatism. As a matter of democratic theory, permanent or extended disenfranchisement creates a class of citizens who are subject to the law but excluded from the process of making the law, a condition fundamentally inconsistent with self-government. The racist origins of felony disenfranchisement laws, many of which were adopted or expanded during the Jim Crow era specifically to suppress Black political power, underscore the urgency of reform in a state like Texas where the impact continues to fall disproportionately on communities of color. As a practical matter, civic participation supports

successful reentry and reduces recidivism by strengthening social bonds and reinforcing a sense of belonging and responsibility. When the state tells returning citizens that they are too dangerous or untrustworthy to vote, it sends a message of permanent exclusion that undermines rehabilitation and community reintegration. Conversely, restoring voting rights sends a message of inclusion and second chances, reinforcing the idea that those who have served their sentences are full members of the community once again. Most importantly, voting rights restoration would empower those with the most direct knowledge of the criminal justice system's failures and injustices to participate in the democratic process of reforming that system, ensuring that policy is informed by lived experience rather than abstract ideology or fear-based rhetoric.

VIII. Prosecutorial Accountability

As documented throughout this report, prosecutorial discretion represents one of the least visible but most consequential sources of racial disparity in the criminal justice system. Federal prosecutors file mandatory minimum charges 65 percent more often against Black defendants than against similarly situated white defendants, a pattern that likely extends to state prosecutors as well. The charging decision determines the maximum possible sentence, shapes the dynamics of plea bargaining by establishing the threat point in negotiations, influences pretrial detention decisions, and sets in motion a cascade of consequences that extend through every stage of the criminal process. Yet prosecutorial decision-making remains largely opaque, insulated from public scrutiny and accountability by traditions of discretion that treat charging and plea bargaining as professional judgments immune from oversight. Reforming this system requires a fundamental shift toward transparency, accountability, and community engagement in prosecutorial functions.

The foundation of prosecutorial accountability must be data transparency. Every prosecutor's office in Texas should be required to publicly report detailed data on charging decisions, plea offers, sentencing recommendations, and case outcomes, disaggregated by the race and ethnicity of defendants. These reports should be published quarterly, made available in accessible formats on the internet, and include sufficient detail to allow researchers, journalists, and community members to identify patterns and disparities. The data should track key decision points including the initial charging decision, any subsequent charge amendments, bail recommendations, plea offers extended and accepted, sentencing recommendations, and final case outcomes. For each category, the data should show the offense type, the defendant's demographic characteristics, the assigned prosecutor, and the reasoning category if available. This level of transparency would allow the public to see whether certain prosecutors systematically charge people of color more harshly than white defendants for similar conduct, whether racial disparities emerge at the plea bargaining stage, and whether sentencing recommendations vary by race even after controlling for offense severity and criminal history.

The Philadelphia District Attorney's Office offers a model for data transparency in prosecution. In October 2019, District Attorney Larry Krasner launched a public data dashboard designed to make the criminal justice system more transparent and replace what he called "fear-driven fictional narratives" with facts. The dashboard initially provided data on charges, bail, and case outcomes, though it did not include case-level data or demographic breakdowns at launch. Despite these limitations, the initiative represented a significant step toward accountability, and the office committed to evolving the system over time. The office also established a Transparency Analytics (DATA) Lab that has helped secure over ten million dollars in funding for data systems improvement and research since 2018. Texas prosecutor offices should follow this example, investing in data infrastructure and committing to regular public reporting that enables independent evaluation of prosecutorial performance and disparities.

Beyond transparency, Texas should establish or strengthen conviction integrity units in every major prosecutor's office to review past convictions for evidence of wrongful convictions and systemic racial bias. Conviction integrity units, sometimes called conviction review units, have become increasingly common in recent years, particularly in large urban jurisdictions. The National Registry of Exonerations reports that as of August 2025, there are 52 conviction integrity units in the United States that have secured at least one exoneration. Major jurisdictions with active units include Cook County, Harris County, Dallas County, Los Angeles County, Brooklyn, Manhattan, Philadelphia, Baltimore, Wayne County, and Washington, D.C. The Dallas County Conviction Integrity Unit, established in July 2007, is widely regarded as the pioneer and has achieved international recognition for its work. Philadelphia's Conviction Integrity Unit is charged with investigating claims of actual innocence, wrongful conviction, and where feasible, sentencing inequities. Brooklyn's unit has helped train prosecutors in other cities including Los Angeles, Detroit, Cleveland, Tampa, and Boston to create or improve their own conviction review programs.

The most effective conviction integrity units have taken a systemic approach, reviewing entire categories of cases affected by police misconduct, forensic errors, or other structural problems. In Cook County and Harris County, the two leading jurisdictions for exonerations in the United States, conviction integrity units conducted systemic reviews of large-scale scandals that affected hundreds of people and led to hundreds of wrongful convictions. Texas should require that conviction integrity units have adequate staffing and independence from the prosecutor's office leadership to conduct thorough investigations, that they prioritize cases involving racial disparities or communities of color disproportionately affected by wrongful convictions, and that they report publicly on their work including cases reviewed, exonerations secured, and patterns of error identified. These units should not exist merely as resume items for elected prosecutors but as genuine institutional commitments to correcting past injustices and identifying the systemic failures that produced them.

Texas should also adopt an open-file discovery mandate requiring prosecutors to share their complete investigative files with defense counsel in all felony cases. North Carolina adopted such a requirement in 2004, making open-file discovery mandatory rather than dependent on the policies of individual prosecutors. Under North Carolina law, prosecutors must share investigator notes, defendant and witness statements, test results, and a list of probable witnesses prior to trial in all felony cases when requested by defense counsel. This policy ensures that defense attorneys have access to all potentially exculpatory or impeachment evidence during the plea bargaining process, not just at trial, addressing one of the fundamental fairness problems in the current system. Research comparing North Carolina to Virginia, which did not have open-file discovery, found that North Carolina defense attorneys reported receiving exculpatory and impeachment evidence more frequently than their Virginia counterparts, demonstrating that open-file rules effectively extend constitutional protections into the pretrial phase when the vast majority of cases are resolved. Several other states have enacted similar reforms, including Alaska, Florida, Minnesota, and Ohio, while New York enacted a major discovery overhaul in 2019 requiring disclosure well before trial and giving defendants access to evidence at least three days before any deadline to accept a plea offer.

Community oversight mechanisms represent another essential element of prosecutorial accountability. Many jurisdictions have established civilian oversight boards for police departments, but few have extended similar oversight to prosecutor offices despite the immense power prosecutors wield. Texas should authorize the creation of local prosecutorial oversight boards composed of community members, particularly those from communities most affected by the criminal justice system, with the authority to review data on prosecutorial decision-making, hold public hearings, investigate complaints about discriminatory charging or plea bargaining practices, and issue public reports with recommendations for reform. These boards should have subpoena power to obtain documents and testimony, access to anonymized case-level data, and the authority to require prosecutors to explain significant disparities in charging or sentencing recommendations. While such boards would not have the power to reverse individual charging decisions, which would raise separation of powers concerns, they could provide transparency and public accountability that is currently absent from prosecutorial decision-making.

Finally, prosecutorial elections themselves represent a crucial mechanism for accountability and reform. Many of the most significant recent reforms in criminal justice have come from newly elected district attorneys who campaigned on platforms of ending mass incarceration, reducing racial disparities, and increasing transparency. Philadelphia's Larry Krasner, elected in 2017, has dramatically reduced charging rates, particularly for low-level offenses, while increasing data transparency. Prosecutors in other jurisdictions have adopted similar reforms after running on progressive platforms that prioritized racial justice and alternatives to incarceration. Texas should

support informed participation in prosecutorial elections by requiring data transparency well before election cycles, facilitating voter education about the role and power of prosecutors, and ensuring that debates about criminal justice policy are grounded in facts about current practices and their racial impacts. When communities have access to data about how their elected prosecutors are exercising discretion, they can make informed choices about whether those prosecutors reflect community values and priorities, creating a feedback loop between democratic accountability and criminal justice reform that can drive systemic change.

IX. Data Collection and Transparency

The findings documented throughout this report demonstrate both the power and the necessity of comprehensive criminal justice data. Every disparity identified, from the 3.3-to-1 Black incarceration rate to the 5.6-to-1 ratio in juvenile placements, emerges from systematic analysis of available records. Yet Texas currently lacks a unified, accessible system for tracking cases through the entire criminal justice continuum. Data remains scattered across local jurisdictions, state agencies, and court systems, making comprehensive analysis difficult and limiting public accountability. The creation of robust data infrastructure is not merely an administrative reform but a fundamental prerequisite for identifying, monitoring, and ultimately eliminating racial disparities in the criminal justice system.

A comprehensive statewide criminal justice data repository should track individual cases from initial police contact through final disposition, including arrest, charging decisions, bail determinations, plea negotiations, trial outcomes, sentencing, incarceration, and post-release supervision. Such a system must include detailed demographic information while protecting individual privacy, allowing researchers and policymakers to identify patterns of disparity at each decision point. The repository should be designed with interoperability in mind, connecting records across county and municipal boundaries and enabling analysis of how cases move through the system. This infrastructure already exists in various forms across the country. California launched comprehensive prison population dashboards in October 2025 that provide detailed information about admissions, releases, and demographic trends, allowing the public and policymakers to explore specific disparities in sentencing. Maryland's judiciary redesigned its data dashboard in 2025 to provide interactive compilation of caseload and performance data across trial and appellate courts. Florida's Criminal Justice Data Transparency initiative similarly increases public visibility of criminal justice processes throughout the state while providing policymakers with information needed for informed decisions.

Beyond data collection, Texas should require racial impact assessments before the legislature considers any new criminal justice legislation. Nine states have already implemented mechanisms for such analysis: Colorado, Connecticut, Florida, Iowa, Maine, Maryland, New Jersey, Oregon, and Virginia. Iowa pioneered this approach in 2008 with its minority impact statement legislation, which allows policymakers to assess the racial impact of proposed changes to sentencing and parole policies before measures reach the floor for debate. Connecticut followed later that year, authorizing racial impact statements for bills concerning pretrial or sentenced populations. Research on these programs shows measurable effects. When Iowa adopted racial impact statements, Black Iowans were incarcerated at 13.6 times the rate of white residents. After using impact statements to inform drug sentencing proposals, that ratio declined to nine to one, still unacceptable but demonstrating the value of data-informed policymaking. Analysis across four states conducting racial impact assessments found that bills with evaluations predicting neutral or reduced disparity were generally more likely to pass than bills with statements suggesting disparate outcomes, indicating that impact statements can shape legislative behavior.

Independent researchers must have access to administrative criminal justice data to conduct rigorous analysis outside the political pressures that sometimes constrain government agencies. Academic researchers at universities, nonprofit policy organizations, and investigative journalists all play vital roles in identifying problems and evaluating solutions. Texas should establish clear protocols for researchers to access deidentified data for legitimate scholarly purposes, balancing privacy concerns with the public interest in understanding how the system functions. The Criminal Justice Initiative at Princeton University convened a national Open Data Summit in August 2025, bringing together researchers, policymakers, journalists, and data scientists to assess the state of criminal justice data and identify shared challenges. The priority areas identified at that summit reflect emerging consensus: the importance of standardized data collection across jurisdictions, the need for timely data release rather than years-old snapshots, and the value of granular information that allows analysis of specific decision points rather than aggregate statistics.

Public dashboards should make key criminal justice metrics accessible to ordinary citizens, community organizations, and the media. These dashboards need not display individual case information, but they should show aggregate statistics on arrests by offense and demographics, bail decisions and pretrial detention rates, charging patterns by prosecutors' offices, sentencing outcomes by judge and court, incarceration populations and durations, and revocation rates for probation and parole. Several jurisdictions have demonstrated that such transparency is both feasible and valuable. Recidiviz provides public dashboards in states like Pennsylvania and North Dakota showing prison and parole populations, reasons for incarceration, and supervision success rates in real time. The Chicago Police Department and Dallas Police Department maintain data dashboards on law enforcement activities. Colorado's Prosecutorial Performance Indicators project

arranges dashboards by jurisdiction within the state, allowing comparisons across different prosecutors' offices. These tools help policymakers, advocates, journalists, and researchers find common ground in pursuit of a smaller, fairer, and more effective criminal justice system.

The transparency infrastructure proposed here would have another crucial benefit: it would make sustained evaluation of reforms possible. As noted earlier in this report, sentencing reforms across twelve states had negligible impacts on racial disparities, a finding possible only because data existed to measure outcomes. Without comprehensive tracking, Texas risks implementing reforms that sound promising but prove ineffective, or worse, that exacerbate existing disparities through unintended consequences. Data transparency creates accountability for all system actors, allows mid-course corrections when reforms underperform, and builds public confidence that the criminal justice system operates fairly. The cost of developing and maintaining such systems is modest compared to the billions Texas spends annually on incarceration, and the return on investment in terms of improved justice outcomes and reduced disparities could be substantial.

X. Constitutional Amendments

State constitutional reforms offer the potential for durable protections that survive changes in legislative composition or executive leadership. Unlike statutes that can be amended or repealed by simple legislative majorities, constitutional provisions require either supermajority legislative support or direct approval by voters, giving them greater stability over time. Texas should consider constitutional amendments that strengthen due process protections at critical junctures in the criminal process. Specific reforms could include establishing an explicit right to counsel at bail hearings, prohibiting wealth-based detention where indigent defendants remain incarcerated solely because they cannot afford money bail, requiring proof of flight risk or danger rather than allowing detention by default, and mandating proportionality review for death sentences to identify arbitrary or discriminatory application. These protections would place Texas among states that have chosen to exceed federal constitutional minimums, recognizing that the floor established by United States Supreme Court decisions represents the minimum permissible standard rather than the aspirational ideal.

The November 2025 passage of Proposition 3 demonstrates both the power and the peril of constitutional change in the criminal justice context. Texas voters approved the amendment by a 61 percent to 39 percent margin, authorizing courts to deny bail for certain violent or sexual felony offenses if prosecutors demonstrate by clear and convincing evidence that release poses risks to public safety or that the defendant will not return to court. Before Proposition 3, the Texas Constitution granted almost everyone who is arrested the right to be released on bail, with limited exceptions for capital murder and certain repeat felonies or bail violations. The measure expanded

judicial authority to deny bail across a much broader range of offenses, including murder, aggravated sexual assault, and human trafficking. While Proposition 3 includes the procedural protection of requiring prosecutors to prove detention is necessary by clear and convincing evidence, and while it grants defendants the right to an attorney during bail hearings, civil rights groups opposed it as tying judges' hands and infringing on the freedom of anyone accused of covered crimes, including those wrongfully accused.

The passage of Proposition 3 poses significant challenges for efforts to address the racial disparities documented in this report. Research consistently shows that pretrial detention increases the likelihood of conviction, leads to harsher sentences, and makes defendants more likely to plead guilty even when they have viable defenses, because the immediate freedom gained through a guilty plea becomes more attractive than exercising the right to trial while remaining jailed. Given the racial disparities in arrests and charging decisions already documented, expanded pretrial detention authority will predictably fall disproportionately on Black defendants. Estimates suggest approximately 40,000 of the more than 800,000 yearly arrests in Texas, about five percent, would be affected by Proposition 3. This may seem modest in percentage terms, but it represents thousands of individuals, disproportionately people of color, who will remain in overcrowded county jails awaiting trial, often for months or years. The mandatory denial of bail for some defendants also means increased pressure on jail capacity in a state where county facilities already struggle with overcrowding and where deaths in custody have drawn national attention.

Responding to Proposition 3 requires a multi-pronged strategy that works within the new constitutional framework while seeking to minimize its disparate impact. First, advocates should pursue new constitutional amendments that build additional protections into the pretrial detention process. These might include requiring prosecutors to demonstrate that no conditions of release could adequately address public safety concerns before detention is authorized, mandating speedy trial rights that take effect more quickly when defendants are detained pretrial, or establishing sunset provisions that require periodic review of whether continued detention remains necessary. Second, litigation should test the limits of Proposition 3, particularly regarding the adequacy of the "clear and convincing evidence" standard and whether certain applications of the detention authority violate federal constitutional protections. The Texas courts will interpret and apply this new provision through case law over coming years, and vigorous advocacy can shape that interpretation toward narrower rather than broader application. Third, local implementation matters enormously. Even within the Proposition 3 framework, prosecutors retain discretion about whether to seek pretrial detention, and judges retain discretion about how to apply the clear and convincing evidence standard. Defense attorneys, working with community organizations and civil rights groups, should demand that this discretion be exercised in ways that minimize racial disparities.

The difficulty of reversing constitutional amendments once adopted means that Proposition 3 will likely remain Texas law for the foreseeable future, making damage mitigation more realistic than repeal. However, this reality should not lead to resignation but rather to redoubled efforts on two fronts. First, advocates must work to prevent further constitutional changes that would expand incarceration or limit procedural protections, recognizing that each such change becomes entrenched and difficult to reverse. Second, the criminal justice reform movement should pursue its own constitutional amendments that could partially offset Proposition 3's effects. A well-designed campaign for bail reform protections, framed around due process and equal justice rather than being soft on crime, could potentially win voter support, particularly if it includes stories of innocent people wrongfully detained or low-level offenders jailed for months on misdemeanor charges. Constitutional change requires sustained advocacy, coalition building, and often multiple attempts before success, but the durability of constitutional protections makes the effort worthwhile. States that have embedded criminal justice reforms in their constitutions have created more stable frameworks than those relying solely on statutes vulnerable to legislative reversal during tough-on-crime political cycles.

XI. Implementation Framework

Implementing the reforms proposed throughout this report requires careful sequencing and strategic prioritization. Some changes can occur immediately through administrative action by officials already in office, requiring no legislative approval or additional funding. Other reforms demand new legislation, appropriations, or both, making them achievable in the near term with political will but unlikely without sustained advocacy. Still others require the kind of fundamental restructuring or constitutional change that takes years of coalition building, public education, and repeated attempts before success. Understanding these distinctions allows reform advocates to pursue multiple strategies simultaneously: implementing quick wins that demonstrate feasibility and build momentum, advancing legislative proposals that could pass in favorable political climates, and laying groundwork for longer-term transformational change.

Immediate reforms achievable through existing authority include prosecutorial policy changes regarding charging decisions, plea offers, and sentencing recommendations. District attorneys possess enormous discretion in Texas's decentralized system, and newly elected prosecutors committed to reform can implement changes within weeks of taking office. These might include declining to prosecute low-level drug possession cases, diverting young offenders to treatment rather than incarceration, or establishing presumptive guidelines for plea offers that reduce unwarranted disparities. Public defenders' offices and court-appointed counsel systems can prioritize training on implicit bias, cultural competency, and effective representation at bail hearings without waiting for legislative action. Probation departments can modify supervision

practices to reduce technical revocations, focusing resources on supporting compliance rather than detecting violations. State agencies overseeing prisons and jails can enhance data collection and transparency, publishing regular reports on demographic disparities within populations and disciplinary processes. Judges can exercise existing discretion more equitably, ensuring that bail decisions genuinely reflect individualized risk assessment rather than reflexive detention, and that sentencing considers mitigating circumstances and alternatives to incarceration.

Near-term reforms requiring legislation include many of the specific proposals discussed earlier in this report: establishing statewide public defense standards and increasing funding to achieve parity with prosecution, creating diversion programs with dedicated appropriations, reforming sentencing statutes to narrow ranges and eliminate mandatory minimums that drive disparities, implementing racial impact statement requirements for future criminal justice legislation, and funding comprehensive data systems that track cases across the justice continuum. These reforms are achievable within one or two legislative sessions if advocates can build sufficient political support, but they face headwinds from tough-on-crime rhetoric and concerns about public safety. Success requires coalition building that spans traditional political divides, engaging law enforcement officials who recognize that mass incarceration has not made communities safer, faith leaders whose theological commitments demand justice and mercy, business groups concerned about workforce development and the economic costs of over-incarceration, and affected communities whose members directly experience the harms of the current system. The Texas Legislature's passage of Senate Joint Resolution 5, which placed Proposition 3 on the ballot, demonstrated that bipartisan coalitions can form around criminal justice issues, with the House approving the measure on a 133 to 8 vote. The challenge for reformers is building similarly broad coalitions around measures that reduce rather than expand incarceration.

Medium-term reforms requiring sustained advocacy and coalition building include measures that face more substantial political obstacles but remain achievable with persistent effort. Abolishing or severely restricting the death penalty would place Texas among the 23 states that have already ended capital punishment, but it faces resistance from prosecutors who view it as a necessary tool and from a public that polls suggest still supports capital punishment for the most heinous crimes, despite growing concerns about wrongful convictions and arbitrary application. Restricting pretrial detention beyond what Proposition 3 now allows would require convincing voters to adopt new constitutional amendments, a heavy lift after they just voted to expand detention authority. Eliminating cash bail entirely in favor of risk assessment-based release decisions has occurred in several jurisdictions but remains controversial and would face opposition from the bail bond industry, which wields significant lobbying power in Texas. These reforms may take five to ten years of advocacy to achieve, requiring careful public education campaigns, demonstration projects that prove feasibility, and often waiting for tragic cases that dramatize the harms of current policy.

Long-term reforms requiring constitutional change or major political shifts include measures like fundamentally restructuring prosecutorial accountability, perhaps through appointing rather than electing district attorneys or creating oversight boards with authority to review charging decisions. Another long-term possibility is establishing constitutional protections against wealth-based detention that go beyond case-by-case review to categorically prohibit money bail. Extending voting rights to currently incarcerated individuals, as Maine and Vermont have done, would address the 479,000 Texans currently disenfranchised and eliminate a 2.5-to-1 Black disparity in voting rights. These reforms face the deepest political resistance because they challenge fundamental structures rather than merely adjusting how existing systems operate. They may require generational change in public attitudes, the kind of shift that has made marriage equality or marijuana legalization possible after decades when both seemed politically impossible.

Critically, achieving meaningful reduction in racial disparities requires engaging stakeholders across the entire criminal justice system. Legislators must pass enabling statutes and appropriate funding, but their reforms will fail if prosecutors decline to use new diversion programs, if judges continue imposing harsh sentences within reformed but still-wide ranges, or if probation officers maintain high revocation rates. Prosecutors and judges must exercise their enormous discretion with conscious attention to racial equity, but their individual efforts will be limited if defense attorneys lack resources to present compelling mitigation or if police continue making disparate arrests. Defense attorneys must provide zealous representation, but they cannot overcome structural disadvantages created by under-funding, inadequate access to experts, and crushing caseloads. Community organizations must maintain pressure on officials and mobilize political support for reforms, but they need allies within the system who can translate advocacy into policy. This interdependence means that reform efforts must target multiple pressure points simultaneously rather than assuming that fixing one part of the system will remedy the whole. The persistence of disparities despite prior reforms, as documented in this report's finding that sentencing changes across twelve states had negligible impacts on racial disparities, demonstrates that piecemeal adjustments without intentional racial equity focus will not suffice.

XII. Section Conclusion

The proposed reforms outlined across these sections, addressing policing, prosecution, defense, bail, sentencing, incarceration, collateral consequences, and transparency, form an interconnected system rather than a menu of isolated options. Reforms targeting police practices will have limited impact if prosecutors can still charge cases in racially disparate ways, if bail practices keep Black defendants jailed pretrial while white defendants secure release, and if sentencing provisions mandate harsh punishments regardless of circumstances. Improving public defense will help individual clients but cannot overcome systemic disadvantages created by prosecutorial charging

patterns, judicial sentencing practices, and parole board decision-making. Sentencing reform that reduces incarceration overall while maintaining racial disparities merely creates a smaller but equally unjust system. Only comprehensive reform that addresses racial equity at every decision point, from initial police contact through final release from supervision, can substantially reduce the stark disparities documented throughout this report.

Every reform proposed here emerges directly from specific findings in this report's analysis and from evidence gathered in other jurisdictions. The call for independent oversight of policing responds to documented disparities in traffic stops, searches, and arrests. The emphasis on public defense funding addresses the resource imbalance between prosecution and defense that contributes to disparate outcomes. Bail reform proposals target the wealth-based detention system that keeps Black defendants jailed pretrial at disproportionate rates. Sentencing reforms address the mandatory minimums and wide ranges that produce the 3.3-to-1 Black incarceration disparity. Death penalty restrictions respond to the finding that 95 percent of recent Harris County capital sentences fell on people of color. Juvenile justice reforms confront the reality that Black youth enter secure facilities at 5.6 times the rate of white youth. Voting rights restoration addresses 479,000 disenfranchised Texans and a 2.5-to-1 Black disparity. Data transparency proposals enable the continued monitoring necessary to ensure reforms achieve intended effects. These are not theoretical exercises but practical responses to documented injustices.

Implementing these reforms faces substantial political challenges that must be acknowledged honestly. Texas has long prided itself on tough criminal justice policies, and many elected officials have built careers on law-and-order rhetoric. The passage of Proposition 3 in November 2025, expanding pretrial detention authority despite opposition from civil rights groups, demonstrates continued public support for policies that incarcerate more people rather than fewer. The state's political leadership has shown little appetite for criminal justice reform in recent legislative sessions, instead advancing measures that increase penalties and limit judicial discretion. Prosecutors in many jurisdictions resist changes that would limit their authority or require them to justify decisions previously made with near-absolute discretion. The bail bond industry, prison guard unions, and private prison companies have financial interests in maintaining high incarceration rates and lobby accordingly. These obstacles are real and must be overcome through sustained organizing, coalition building, and political engagement rather than ignored or minimized.

Yet the urgency of the documented disparities demands action despite political difficulty. Black Texans incarcerated at more than triple the rate of white Texans, Black youth in juvenile facilities at more than five times the white rate, 47.6 percent of death row occupied by Black people in a state that is 13 percent Black, these are not merely statistics but human lives blighted by a system that

fails to provide equal justice. Every day that passes without reform means hundreds of people subjected to disparate treatment because of their race, families torn apart by unnecessarily harsh sentences, communities destabilized by over-incarceration, and the state's moral authority to enforce criminal law undermined by its failure to do so equitably. The practical costs are also staggering: Texas spends billions annually on incarceration that research consistently shows does not improve public safety compared to alternative approaches, diverts resources from education and healthcare and infrastructure that could actually strengthen communities, and creates economic drag through lost workforce participation and intergenerational poverty.

Different audiences can contribute to advancing these reforms in distinct ways. Legislators can introduce bills implementing specific proposals from this report, hold oversight hearings on racial disparities in criminal justice, appropriate funding for public defense and diversion programs, and require racial impact statements for future legislation. Prosecutors can exercise their discretion to decline prosecution of low-level offenses, establish presumptive plea offer guidelines that reduce disparities, prioritize diversion over incarceration for appropriate cases, and support rather than oppose defense requests for reasonable bail and alternative sentences. Judges can carefully scrutinize bail decisions to ensure detention is truly necessary rather than reflexive, sentence within reformed ranges in ways that minimize unwarranted disparity, grant motions to seal records that limit collateral consequences, and speak publicly about racial equity in the criminal justice system. Defense attorneys can provide zealous representation while also collecting data on disparate treatment that can support systemic reform efforts, mentor new lawyers to ensure culturally competent representation, and participate in policy advocacy that addresses structural disadvantages. Community members and advocates can contact elected officials demanding reform, support candidates committed to criminal justice equity, participate in oversight boards and commissions, tell stories that humanize the impacts of current policy, and maintain sustained pressure through organizing, protest, and political engagement.

Texas stands at a crossroads in criminal justice policy. The state can continue down its current path, maintaining incarceration rates far above the national average, tolerating racial disparities that violate fundamental commitments to equal justice, and spending billions on a system that fails to deliver public safety or fairness. Alternatively, Texas can join the growing number of states that have chosen different approaches, reducing incarceration while maintaining or improving public safety, addressing racial disparities through intentional policy reform, and treating criminal justice not as a political wedge issue but as a complex social problem requiring evidence-based solutions. The state has the resources, the research base, and the reform models to make meaningful change if it musters the political will. Other large, conservative states have managed significant reforms: Georgia reduced its prison population by nearly a quarter while crime rates fell. South Carolina reformed sentencing and improved reentry services with bipartisan support. Even small steps in the

right direction, implementing a few of the proposed reforms rather than all of them, would improve outcomes for thousands of Texans and begin addressing the documented disparities. The opportunity exists for Texas to lead on criminal justice reform or, at minimum, to stop being an outlier in the wrong direction, standing apart from national trends toward more humane and effective approaches. The question is whether the state's leaders and citizens will seize that opportunity or continue policies that increasingly appear as relics of a failed tough-on-crime era that has run its course.

Conclusion

The evidence compiled in this report leads to an unavoidable conclusion: the Texas criminal justice system does not treat all Texans equally. Black Texans are incarcerated at 3.3 times the rate of white Texans. They comprise 33 percent of the prison population while representing only 13 percent of the state's residents. They are arrested for marijuana possession at 2.6 times the rate of white Texans despite similar usage rates. They occupy 47.6 percent of death row. They account for 95 percent of recent death sentences in Harris County. They face bail amounts nearly \$10,000 higher than white defendants charged with similar offenses. They lose voting rights at 2.5 times the rate of white citizens. At every stage of the criminal justice process, from the initial traffic stop through sentencing, incarceration, and the restoration of civil rights, Black Texans experience a different system than white Texans.

These disparities are not the product of higher crime rates among Black Texans. The data consistently shows that where discretion exists, it is exercised differently based on race. Police search Black drivers more often despite finding contraband less frequently. Prosecutors file mandatory minimum charges against Black defendants 65 percent more often than against white defendants with similar cases. Judges set higher bail amounts for Black defendants. Parole boards grant release to Black applicants at lower rates. Each decision point introduces bias, and the cumulative effect produces the stark disparities documented throughout this report.

The historical trends offer both hope and caution. Between 2005 and 2019, the Black incarceration rate in Texas fell by 57 percent, and the disparity ratio declined from 5.7 to 3.3. This improvement demonstrates that policy changes can reduce racial inequity in the criminal justice system. Yet the persistence of a more than threefold disparity after these gains underscores how deeply embedded these patterns are. At current rates of progress, true equality would remain generations away. The passage of Proposition 3 in November 2025, expanding pretrial detention authority in ways that will predictably affect Black Texans disproportionately, shows that progress is not guaranteed and can be reversed.

The costs of these disparities extend far beyond those who are arrested, prosecuted, and incarcerated. Families lose breadwinners and caregivers. Children grow up with incarcerated parents, facing elevated risks of poverty, trauma, and their own future involvement with the criminal justice system. Communities lose residents, taxpayers, and civic participants. The state spends billions of dollars annually on incarceration that research consistently shows produces

worse outcomes than alternative approaches. And the legitimacy of the entire legal system erodes when substantial portions of the population cannot trust that they will receive equal treatment under the law.

Texas possesses the legal tools to address these disparities. The Texas Constitution guarantees equal rights and due process. Federal civil rights statutes provide causes of action against discriminatory practices. Existing state law requires data collection on racial profiling and establishes standards for pretrial release. Landmark cases like *ODonnell v. Harris County* have demonstrated that courts can mandate reform when constitutional rights are violated. The question is not whether reform is legally possible but whether the political will exists to pursue it.

The reforms proposed in this report are neither radical nor untested. States across the political spectrum have reduced incarceration rates while maintaining or improving public safety. Conservative states like Georgia and South Carolina have reformed sentencing with bipartisan support. Liberal states like California and New York have reclassified offenses and expanded diversion programs. The experience of these jurisdictions provides evidence about what works and what does not. Texas need not experiment blindly; it can learn from reforms that have already been implemented elsewhere.

What Texas cannot do is continue to ignore the evidence. The disparities documented in this report are not new discoveries. They have been measured and reported for decades. Each year that passes without meaningful reform means thousands more Black Texans arrested, prosecuted, convicted, and incarcerated at rates that cannot be justified by any legitimate penological purpose. Each execution of a Black defendant in a system where 95 percent of recent death sentences in the state's largest county have fallen on people of color raises profound questions about whether capital punishment can ever be administered fairly. Each election in which nearly half a million disenfranchised Texans cannot participate undermines the democratic foundations of the state's government.

The choice before Texas is not whether to have a criminal justice system but what kind of system to have. The current system fails by its own stated standards. It does not deter crime more effectively than less punitive approaches. It does not rehabilitate offenders; it often makes them more likely to reoffend. It does not provide equal justice; the evidence of racial disparity is overwhelming. It does not serve victims, who consistently report that they want accountability and prevention more than vengeance. And it costs far more than alternatives that produce better outcomes by every measure.

This report is offered as a resource for those who believe Texas can do better. The data establishes the scope of the problem. The legal analysis identifies available remedies. The proposed reforms provide a roadmap for action. What remains is the harder work of building political coalitions,

changing public attitudes, and holding officials accountable. That work belongs to legislators who can pass reform bills, prosecutors who can change charging practices, judges who can exercise discretion equitably, defense attorneys who can advocate for clients and for systemic change, and citizens who can vote, organize, and demand that their government provide equal justice for all Texans.

The numbers in this report will change. Some will improve as reforms take hold; others may worsen if policies move in the wrong direction. What should not change is the commitment to measuring, documenting, and addressing racial disparities in the criminal justice system. Transparency is not sufficient for reform, but reform is impossible without it. By continuing to collect and publish data on how the system operates, Texas can maintain accountability for progress and identify emerging problems before they become entrenched. The work of achieving equal justice is never finished, but it must begin with an honest accounting of where we stand. This report provides that accounting. What comes next is up to Texas.

Appendix

A. Data Tables

Table A-1: Summary of Key Racial Disparity Ratios in Texas Criminal Justice

System Stage	Metric	Black-White Disparity	Data Year	Source
Overall Incarceration	Incarceration rate per 100,000	3.3x higher for Black Texans	2021	Prison Policy Initiative
Prison Population	Share of prison population vs. state population	33% of prisoners vs. 13% of residents	2021	Council on Criminal Justice
Jail Population	Share of jail population vs. state population	27% of jail inmates vs. 13% of residents	2021	Council on Criminal Justice
Traffic Stop Arrests	Arrest rate following traffic stops (Houston)	1.8x higher (4.0% vs. 2.2%)	2024	Houston Police Department
Marijuana Arrests	Arrest rate for possession	2.6x higher for Black Texans	2017-2021	ACLU of Texas
Pretrial Bail	Average bail amount difference	~\$10,000 higher for Black defendants	2019-2023	Prison Policy Initiative
Federal Sentencing	Sentence length for comparable offenses	13.4% longer for Black males	2023	U.S. Sentencing Commission
Death Row	Share of death row vs. state population	47.6% of death row vs. 13% of residents	2025	TDCJ
Juvenile Placement	Rate of placement in facilities	5.6x higher for Black youth	2023	The Sentencing Project
Felony Disenfranchisement	Rate of voting rights loss	2.5x higher for Black Texans	2025	The Sentencing Project

Source: Data compiled from sources cited in report body. See Sources Index for full citations.

Table A-2: Texas Death Row Demographics (2025)

Race/Ethnicity	Number on Death Row	Percentage of Death Row	Percentage of Texas Population
Black	80	47.6%	13.0%
Hispanic/ Latino	45	26.8%	40.2%
White	39	23.2%	39.8%
Other	4	2.4%	7.0%
Total	168	100%	100%

Additional Demographics:

- Women on death row: 7
- People sentenced for crimes committed under age 21: 30 (93% are people of color)

Source: Texas Coalition to Abolish the Death Penalty, "Texas Death Penalty Facts" (2025), citing Texas Department of Criminal Justice data. Available at: <https://tcadp.org/get-informed/texas-death-penalty-facts/>

Table A-3: Texas Death Row Population by County (2025)

County	Current Death Row Population	Total Executions (All Time)	Death Sentences 2024-2025
Harris (Houston)	64	135	2 (2025)
Dallas	11	66	0
Tarrant (Fort Worth)	14	24	1 (2025)
Bexar (San Antonio)	8	22	0
Other Counties	71	varies	0
Total	168	591	3

Note: Harris County alone accounts for 38% of Texas's current death row population and has executed more people than any U.S. state except Texas as a whole. **Source:** Texas Coalition to Abolish the Death Penalty, "Texas Death Penalty Facts" (2025). Available at: <https://tcadp.org/get-informed/texas-death-penalty-facts/>

Table A-4: Texas Death Sentences by Year (1999-2025)

Year	New Death Sentences	Notes
1999	48	Peak year
2000	35	
2005	14	
2010	8	
2015	3	
2016	4	
2017	5	
2018	3	
2019	4	Includes Ronald Haskell (first white defendant sentenced in Harris County since 2004)
2020	3	COVID-19 court delays
2021	4	
2022	5	
2023	2	
2024	6	
2025	3	As of December 2025

Key Finding: Over the last five years (2020-2025), nearly 70% of death sentences have been imposed on people of color, and over 40% have been imposed on Black defendants. **Source:** Texas Coalition to Abolish the Death Penalty, "Texas Death Penalty Facts" (2025); Death Penalty Information Center. Available at: <https://tcadp.org/get-informed/texas-death-penalty-facts/>

Table A-5: Houston Police Department Traffic Stop Outcomes by Race (2024)

Race/Ethnicity	Total Traffic Stops	Arrests	Arrest Rate
Black	100,804	4,067	4.0%
White	89,710	1,930	2.2%
Hispanic	92,036	2,130	2.3%
Asian	12,847	178	1.4%
Other	5,103	95	1.9%
Total	300,500	8,400	2.8%

Key Finding: Black individuals had an arrest rate (4.0%) nearly double that of white individuals (2.2%) following traffic stops, despite comprising a similar share of total stops. **Source:** Houston Police Department, "2024 Annual Racial Profiling Report" (February 2025). Available at: https://www.houstontx.gov/police/departments_reports/racial_profiling/2024_Annual_Racial_Profiling_021625.pdf

Table A-6: Racial Disparities in Juvenile Placement, Top 10 States (2023)

Rank	State	Black-White Disparity Ratio	Black Placement Rate (per 100k)	White Placement Rate (per 100k)
1	New Jersey	40.2x	281	7
2	Connecticut	17.2x	189	11
3	Nebraska	17.2x	361	21
4	Wisconsin	16.4x	295	18
5	Massachusetts	14.3x	100	7
6	California	11.8x	118	10
7	Iowa	11.2x	213	19
8	Minnesota	10.8x	151	14
9	New York	10.5x	84	8
10	Pennsylvania	10.2x	163	16
—	Texas	~3.0x	~150	~50
—	National Average	5.6x	293	52

Note: The national Black-white disparity ratio of 5.6x represents an all-time high based on data starting in 1997. Overall juvenile placements declined 46% between 2013-2023, but racial disparities worsened in 23 states. **Source:** The Sentencing Project, "Black Disparities in Youth Incarceration" (2023). Available at: <https://www.sentencingproject.org/fact-sheet/black-disparities-in-youth-incarceration/>

Table A-7: Texas Felony Disenfranchisement (2025)

Category	Number	Percentage of Disenfranchised
Currently incarcerated for felony	~152,000	32%
On felony probation	~230,000	48%
On felony parole	~97,000	20%
Total Disenfranchised	~479,000	100%

Racial Disparities in Disenfranchisement:

Group	Disenfranchisement Rate	Disparity Ratio
Black Texans	~5.0% of voting-age population	2.5x baseline
Latino Texans	~2.4% of voting-age population	1.2x baseline
White Texans	~2.0% of voting-age population	Baseline

Note: Texas has the second-largest disenfranchised population in the United States, behind only Florida. Texas prohibits voting for individuals on felony probation or parole, meaning 327,000+ Texans who live in communities, work jobs, and pay taxes cannot vote. **Source:** The Sentencing Project, "Texas Denies Voting Rights to People with Felony Convictions" (2025). Available at: <https://www.sentencingproject.org/fact-sheet/texas-denies-voting-rights-to-people-with-felony-convictions/>

Table A-8: Historical Trends in Texas Incarceration Disparities (2005-2019)

Metric	2005	2019	Change
Black-White Admission Rate Disparity	5.2x	2.6x	-50%
Black-White Imprisonment Rate Disparity	5.7x	3.6x	-37%
Black Admission Rate (per 100,000)	~1,200	~515	-57%
White Admission Rate (per 100,000)	~230	~198	-14%

Key Finding: While disparities have narrowed substantially since 2005, Black Texans still face incarceration rates more than three times those of white Texans. The improvement resulted primarily from declining Black admission rates (-57%) rather than increasing white rates (-14%).

Source: Council on Criminal Justice, "Racial Disparities in the Criminal Justice System: Texas" (2021). Available at: <https://counciloncj.foleon.com/reports/racial-disparities/texas>

Table A-9: Texas Overall Incarceration Statistics (2024)

Category	Number
People in state prisons	~133,000
People in local jails	~66,000
People in federal prisons (in Texas)	~15,000
People in immigration detention	~5,000
Total Incarcerated	~219,000
On probation	~340,000
On parole	~97,000
Total Under Supervision	~656,000

Key Statistics:

- Texas incarceration rate: 751 per 100,000 residents
- Percentage of jail population not convicted (pretrial): 76%
- Annual jail bookings: ~505,000 different individuals

Source: Prison Policy Initiative, "Texas Profile" (2024). Available at: <https://www.prisonpolicy.org/profiles/TX.html>

B. Glossary of Terms

Arraignment: A court proceeding in which a defendant is formally charged with a crime and asked to enter a plea (guilty, not guilty, or no contest). In Texas, arraignment typically occurs within 48 hours of arrest for those held in custody.

Bail: Money or property deposited with the court to secure a defendant's release from custody pending trial. The purpose is to ensure the defendant returns for court appearances. Bail may be returned after the case concludes if the defendant complied with all conditions.

Capital Punishment: The legal process whereby a person is put to death by the state as punishment for a crime. In Texas, capital punishment is authorized only for capital murder. Texas has executed more people than any other state since the death penalty was reinstated in 1976.

Cash Bail / Money Bail: A system requiring defendants to pay a specified amount of money to secure release from pretrial detention. Critics argue this system discriminates against poor defendants who cannot afford bail, regardless of their actual flight risk or danger to the community.

Class Action: A lawsuit in which one or more plaintiffs sue on behalf of a larger group (class) of people with similar claims. Class actions are often used to challenge systemic practices affecting many individuals, such as bail reform litigation.

Collateral Consequences: Legal and social penalties that extend beyond the direct criminal sentence, including loss of voting rights, ineligibility for public housing, barriers to employment, denial of professional licenses, and deportation for non-citizens.

Confidence Interval: A range of values within which the true value of a statistical measure is likely to fall. Wider confidence intervals indicate greater uncertainty.

Consent Decree: A court order that settles a lawsuit while the defendant admits no wrongdoing. In civil rights cases, consent decrees often require government agencies to implement specific reforms under court supervision. The Harris County bail reform resulted from a consent decree in *ODonnell v. Harris County*.

Consent Search: A search conducted with the voluntary permission of the individual, rather than pursuant to a warrant or other legal authority. The validity of consent can be challenged if it was obtained through coercion or if the individual did not understand their right to refuse.

Control Variable: In statistical analysis, a factor held constant to isolate the effect of another variable. Studies of sentencing disparities, for example, may control for offense severity and criminal history to isolate the effect of race.

Death Row: The section of a prison housing inmates sentenced to death. As of 2025, Texas death row holds 168 people, with Harris County accounting for 38% of this population.

Determinate Sentencing: A sentencing system where the judge imposes a fixed term of imprisonment. Contrast with indeterminate sentencing, where a range is imposed and parole boards determine actual release.

Discovery: The pretrial process by which parties in a lawsuit obtain evidence from each other. In criminal cases, prosecutors must disclose certain evidence to the defense. "Open-file discovery" policies require prosecutors to share their complete investigative files.

Disparity Ratio: The ratio comparing rates between two groups. A Black-white incarceration disparity ratio of 3.3 means Black individuals are incarcerated at 3.3 times the rate of white individuals.

Diversion: Programs that redirect offenders away from traditional criminal justice processing toward alternative interventions such as treatment, education, or community service. Successful completion typically results in charges being dismissed or reduced.

Due Process: Constitutional guarantee (Fifth and Fourteenth Amendments) that the government cannot deprive individuals of life, liberty, or property without fair procedures. Procedural due process requires fair hearings; substantive due process protects fundamental rights from government interference.

Eighth Amendment: Constitutional provision prohibiting excessive bail, excessive fines, and cruel and unusual punishment. The Eighth Amendment provides a basis for challenging bail amounts that are higher than necessary and for challenging conditions of confinement.

Equal Protection Clause: Provision of the Fourteenth Amendment requiring states to provide equal protection of the laws to all persons. Equal protection claims challenge government actions that discriminate based on race or other protected characteristics.

Exclusionary Rule: The legal principle that evidence obtained in violation of constitutional rights (such as through an unlawful search) cannot be used against a defendant at trial.

Exculpatory Evidence: Evidence favorable to the defendant that tends to prove innocence or mitigate guilt. Under *Brady v. Maryland*, prosecutors must disclose exculpatory evidence to the defense.

Felony: A serious crime typically punishable by more than one year in prison. In Texas, felonies are classified from Capital (death penalty eligible) through First, Second, Third Degree, and State Jail Felony. Felony convictions carry significant collateral consequences including loss of voting rights.

Fourth Amendment: Constitutional provision protecting against unreasonable searches and seizures and requiring warrants to be supported by probable cause. Fourth Amendment challenges can address discriminatory stop-and-frisk practices and pretextual traffic stops.

Fourteenth Amendment: Constitutional amendment (ratified 1868) guaranteeing due process and equal protection of the laws. The Fourteenth Amendment applies Bill of Rights protections to state governments and is the primary basis for challenging state discrimination.

Grand Jury: A group of citizens convened to determine whether sufficient evidence exists to indict (formally charge) a person with a crime. In Texas, grand juries consist of 12 members and require 9 votes to indict. Grand jury proceedings are secret.

Habeas Corpus: A legal proceeding in which a court examines the legality of a person's detention. "The Great Writ" allows prisoners to challenge unlawful imprisonment. In Texas, habeas corpus is governed by Article 11 of the Code of Criminal Procedure.

Hit Rate: In policing contexts, the percentage of searches that discover contraband or evidence of crime. Comparing hit rates across racial groups can reveal whether police apply consistent standards; lower hit rates for a particular group suggest a lower threshold of suspicion is being applied.

Incarceration: Confinement in a jail or prison. This report uses "incarceration" to refer broadly to both jail and prison populations unless otherwise specified.

Incarceration Rate: The number of people incarcerated per 100,000 residents. Texas's overall incarceration rate is 751 per 100,000, higher than any independent democratic nation.

Indictment: A formal accusation of a crime issued by a grand jury. In Texas, felony prosecutions generally require grand jury indictment unless the defendant waives this right.

Jail: A local facility, typically operated by a county sheriff, that holds people awaiting trial (pretrial detainees), serving short sentences (usually under one year), or awaiting transfer to state prison. Contrast with prison.

Mandatory Minimum: A sentencing law requiring judges to impose at least a specified minimum prison term for certain offenses, regardless of mitigating circumstances. Research shows mandatory minimums contribute to racial disparities because prosecutors have discretion in whether to file charges that trigger them.

Misdemeanor: A less serious crime typically punishable by up to one year in jail. In Texas, misdemeanors are classified as Class A (up to one year), Class B (up to 180 days), or Class C (fine only).

Parole: Supervised release from prison before the completion of a sentence. Parolees must comply with conditions set by the parole board and are subject to return to prison for violations. In Texas, people on parole cannot vote.

Pattern or Practice: Under 34 U.S.C. § 12601, the Department of Justice can investigate and sue law enforcement agencies that engage in a "pattern or practice" of constitutional violations. Such investigations can result in consent decrees requiring comprehensive reforms.

Per Capita Rate: A rate calculated per unit of population, typically per 100,000 residents. Per capita rates allow comparison across jurisdictions of different sizes.

Peremptory Challenge: During jury selection, a party's right to reject a potential juror without stating a reason. The number of peremptory challenges is limited by law. *Batson v. Kentucky* prohibits using peremptory challenges to exclude jurors based on race.

Personal Recognizance Bond (PR Bond): Release from custody based on the defendant's promise to appear for court dates, without requiring payment of money. PR bonds recognize that many defendants pose minimal flight risk and can be trusted to return for trial.

Plea Bargain: An agreement between the prosecutor and defendant in which the defendant pleads guilty (often to a lesser charge) in exchange for a more lenient sentence or dismissal of other charges. Approximately 95% of criminal convictions result from plea bargains rather than trials.

Pretextual Stop: A traffic stop ostensibly based on a minor violation (such as a broken taillight) but actually motivated by a desire to investigate other suspected criminal activity. Pretextual stops are controversial because they grant officers broad discretion that can be exercised in racially discriminatory ways.

Pretrial Detention: Incarceration of a defendant between arrest and trial, typically because they cannot afford bail or have been denied bail entirely. Research shows pretrial detention increases the likelihood of conviction and longer sentences.

Prison: A state or federal facility housing people convicted of crimes and sentenced to terms typically exceeding one year. In Texas, prisons are operated by the Texas Department of Criminal Justice. Contrast with jail.

Probable Cause: The legal standard required for arrests and search warrants, defined as facts and circumstances sufficient to lead a reasonable person to believe a crime has been or is being committed. Probable cause requires more than mere suspicion but less than proof beyond a reasonable doubt.

Probation: A sentence allowing a convicted person to remain in the community under supervision rather than serving time in prison. Probationers must comply with conditions and may be incarcerated for violations. In Texas, people on felony probation cannot vote.

Qualified Immunity: A legal doctrine shielding government officials from civil liability unless their conduct violated "clearly established" constitutional rights. Critics argue qualified immunity makes it nearly impossible to hold police officers accountable for misconduct.

Racial Profiling: Law enforcement action based on an individual's race, ethnicity, or national origin rather than their behavior or specific information identifying them as having engaged in criminal activity. Texas law prohibits racial profiling and requires data collection on traffic stops.

Reasonable Suspicion: The legal standard required for a brief investigative stop (a "Terry stop"), defined as specific, articulable facts suggesting criminal activity. Reasonable suspicion requires less evidence than probable cause.

Recidivism: The tendency of a convicted criminal to reoffend. Recidivism rates are often used to evaluate the effectiveness of criminal justice interventions.

Regression Analysis: A statistical method for examining relationships between variables while controlling for other factors. Regression analysis can estimate, for example, how much of a sentencing difference is attributable to race after accounting for offense characteristics.

Restitution: Court-ordered payment by a convicted offender to compensate victims for losses caused by the crime.

Risk Assessment: A tool or process used to evaluate the likelihood that a defendant will fail to appear for court or commit a new crime if released pretrial. Risk assessments are increasingly used to inform bail decisions, though concerns exist about potential racial bias in these instruments.

School-to-Prison Pipeline: The pattern by which school discipline policies, particularly zero-tolerance policies and the presence of police in schools, funnel students into the juvenile and criminal justice systems. This pipeline disproportionately affects Black and Hispanic students.

Sentencing Guidelines: Rules or recommendations that guide judges in determining appropriate sentences. Guidelines aim to promote consistency and reduce unwarranted disparities. Texas does not have a formal sentencing commission or comprehensive guidelines system.

Statistical Significance: A measure of whether an observed result is likely due to a real effect rather than random chance. Results are typically considered statistically significant if there is less than a 5% probability they occurred by chance.

Supervised Release: A period of community supervision following release from federal prison, similar to parole in the state system.

TCJS (Texas Commission on Jail Standards): The state agency responsible for establishing minimum standards for county jails and inspecting facilities for compliance.

TDCJ (Texas Department of Criminal Justice): The state agency responsible for operating Texas prisons, supervising parolees, and providing reentry services. TDCJ oversees approximately 100 prison units housing over 130,000 inmates.

Technical Violation: A violation of probation or parole conditions that does not involve a new criminal offense, such as missing a meeting with a supervision officer, failing a drug test, or traveling without permission. Technical violations can result in incarceration.

TJJD (Texas Juvenile Justice Department): The state agency responsible for juvenile corrections, operating five secure facilities and providing community-based supervision for youth adjudicated delinquent.

Wealth-Based Detention: Pretrial incarceration that results from inability to pay bail rather than from dangerousness or flight risk. Courts have found wealth-based detention unconstitutional when it detains indigent defendants who would be released if they could afford bail.

C. Methodology

Data Sources

This report relies on data from the following categories of sources:

Government Agencies:

- Texas Department of Criminal Justice (TDCJ)
- Houston Police Department
- U.S. Sentencing Commission
- Texas Juvenile Justice Department (TJJD)

Research Institutions:

- Prison Policy Initiative
- Council on Criminal Justice
- The Sentencing Project
- RAND Corporation

Advocacy Organizations:

- Texas Coalition to Abolish the Death Penalty (TCADP)
- ACLU of Texas
- Texas Defender Service
- Grassroots Leadership

Academic Studies:

- Peer-reviewed research on sentencing disparities, bail practices, and policing, referenced in sources.

Time Periods

Data in this report spans from 2005 to 2025, with emphasis on the most recent available statistics. Historical trend data is included to illustrate changes over time. Specific data years are noted in each table.

Geographic Scope

This report focuses on Texas, with county-level analysis provided for Harris, Dallas, Tarrant, and Bexar counties where detailed data is available. National data is included for context and comparison.

Limitations

- **Incomplete Reporting:** Some jurisdictions do not collect or publish race-disaggregated data for all decision points.
- **Category Definitions:** "Race" and "ethnicity" are defined differently across data sources. Hispanic/Latino individuals may be counted differently across datasets.
- **Self-Reported Data:** Some law enforcement data relies on officer perception of race rather than self-identification.
- **Data Lag:** Most recent complete data is typically 1-2 years old due to reporting and compilation delays.

D. Contact

For questions about this report, requests for additional data, or to report corrections, please contact Criminal Appeals Advocates PLLC (737) 338-3233.

Sources Index

Topic	Source	URL
Texas Incarceration Overview	Prison Policy Initiative	https://www.prisonpolicy.org/profiles/TX.html
Texas Racial Disparities Report	Council on Criminal Justice	https://counciloncj.foleon.com/reports/racial-disparities/texas
Houston Police Racial Profiling	Houston Police Department	https://www.houstontx.gov/police/department_reports/racial_profiling/2024_Annual_Racial_Profiling_021625.pdf
Harris County Disparities	Grassroots Leadership	https://www.grassrootsleadership.org/care-not-cages-new-report-reveals-significant-racial-disparities-in-policing-and-jailing-in-harris-county
Marijuana Arrests	NORML	https://norml.org/news/2022/04/28/texas-african-americans-disproportionately-comprise-those-arrested-statewide-for-marijuana-possession/
Marijuana Arrests	ACLU of Texas	https://www.aclutx.org/en/press-releases/new-aclu-report-black-people-still-almost-three-times-more-likely-get-arrested
Dallas County Bail Case	Texas Tribune	https://www.texastribune.org/2024/01/08/supreme-court-cash-bail-dallas-county/
Bail Analysis	Prison Policy Initiative	https://www.prisonpolicy.org/blog/2025/05/14/texas_bail/
Federal Sentencing Data	U.S. Sentencing Commission	https://www.ussc.gov/research/research-reports/2023-demographic-differences-federal-sentencing
Sentencing Reform Impact	Council on Criminal Justice	https://counciloncj.org/state-sentencing-reforms-had-little-impact-on-racial-disparities-in-imprisonment-analysis-finds/
Death Row Statistics	TDCJ	https://www.tdcj.texas.gov/death_row/dr_gender_racial_stats.html
Death Penalty Facts	TCADP	https://tcadp.org/get-informed/texas-death-penalty-facts/

Topic	Source	URL
Harris County Death Penalty	Death Penalty Information Center	https://deathpenaltyinfo.org/new-report-from-texas-defender-service-examines-ongoing-racial-disparities-in-harris-county-death-penalty-practices-and-recommends-reforms
Death Penalty by Victim Race	Capital Punishment in Context	https://capitalpunishmentincontext.org/issues/race
Abbott Voter Roll Announcement	Texas Tribune	https://www.texastribune.org/2024/08/27/greg-abbott-voter-rolls-texas/
Juvenile Justice	Harvard Political Review	https://harvardpolitics.com/juvenile-injustice-system/
Youth Incarceration	The Sentencing Project	https://www.sentencingproject.org/fact-sheet/black-disparities-in-youth-incarceration/
Voting Rights	The Sentencing Project	https://www.sentencingproject.org/fact-sheet/texas-denies-voting-rights-to-people-with-felony-convictions/

Report compiled December 2025

