



# CRIMINAL JUSTICE REFORM TOPIC: AFFIRMATIVE

National Federation of State  
High School Associations



Resolved: The United States federal government should enact substantial criminal justice reform in the United States in one or more of the following: forensic science, policing, sentencing.

A look at possible affirmative cases, provided by Rich Edwards, Baylor University



# GEORGE FLOYD JUSTICE IN POLICING ACT

- Current methods of policing in the United States have devastating consequences for racial minorities.
- Current federal incentives promote a warrior mentality and a sense of impunity for police.
- The George Floyd Justice in Policing Act would hold police accountable for their actions.

Nancy Pelosi, (Speaker of the House of Representatives), *Newsroom*, June 25, 2020. Retrieved June 26, 2020 from <https://www.speaker.gov/newsroom/62520-0>

This legislation contains bold, unprecedented reforms, including banning chokeholds. People say, ‘Well, why can't you compromise with the other side?’ Well, they don't ban chokeholds. We ban chokeholds. So are we supposed to come up with a number of chokeholds we are going to agree with? No, we ban chokeholds. Stopping no-knock warrants on drug offenses, entering – ending the court-created qualified immunity doctrine that is a barrier to holding police officers accountable for wrongful conduct.





# FORENSIC SCIENCE: INDEPENDENT CRIME LABS

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- Crime labs currently have a significant pro-prosecution bias.
- Most crime labs are operated by police departments; the Trump administration has abandoned federal oversight.
- Crime lab independence best ensures truth-seeking in the criminal justice process.

Keith Findley, (Center for Integrity in Forensic Sciences, University of Wisconsin Law School), WASHINGTON POST, Aug. 26, 2019. Retrieved Apr. 3, 2020 from Nexis Uni.

Remove all crime laboratories from the administrative control of law enforcement. This was another important recommendation of the 2009 NAS Report. Science, if it is real science, should be neutral and objective. It should not favor or uniquely serve one side or the other. Only by fully removing all laboratories from the administrative control of law enforcement can the laboratories begin to develop a real ethic of scientific neutrality and objectivity, and can the analysts have a realistic hope of avoiding the pressures and biases when one is perceived as part of the law enforcement team. In many jurisdictions, this suggestion is a nonstarter, as police and prosecutors typically jealously protect "their" laboratories as the source for "their" evidence.



# FORENSIC SCIENCE: REFORM DNA COLLECTION AND TESTING

- DNA collection and testing processes perpetuate discrimination.
- Existing checks on DNA database and collection processes are inadequate.
- Federal oversight of DNA collection and testing would correct current abuses.

Erin Murphy, (Prof., Law, NYU School of Law), *INSIDE THE CELL: THE DARK SIDE OF FORENSIC DNA*, 2015, 259.

Compulsory DNA programs are tied to arrest and conviction rates, and every state has a criminal population that over-represents blacks and/or Hispanics, while underrepresenting whites. Thus, it is safe to assume that the national DNA database itself is racially skewed. Not only does that mean that blacks and Hispanics disproportionately endure genetic surveillance, but it also specially exposes those groups to any errors or abuses in the operation of the database. In consequence, the risks of erroneous matches, mistaken interpretations, or wrongful accusations are borne unduly by black and Hispanic persons.



# FORENSIC SCIENCE: REFORM OF TESTING RAPE KITS

- Large backlogs in the testing of rape kits allow sexual predators to escape justice.
- The current requirement that only public DNA labs can test rape kits impedes efforts to reduce the testing backlog.
- Removing current limitations on the testing of rape kits will bring sexual predators to justice.

Gaby Lion, (JD Candidate, U. of California College of Law), HASTINGS LAW JOURNAL, Apr. 2018, 1025.

Standard 17 should be amended to reduce duplication of effort and to make it more affordable to process large numbers of backlogged kits without sacrificing accuracy. The following two requirements should be struck from the regulations: (1) the requirement that public labs perform 100% technical review of private lab work (QAS Standard 17.6); and (2) the requirement that the public lab must perform an annual site visit and audit of each hired private lab (QAS Standard 17.7).





# FORENSIC SCIENCE: REFORM USE OF FACIAL RECOGNITION SYSTEMS

- Facial recognition systems violate privacy and undermine freedom of speech and assembly.
- The federal government funds facial recognition systems, but fails to regulate their use.
- Restriction on the use of facial recognition systems promotes privacy and democracy.

Mariko Hirose, (Sr. Staff Attorney, New York Civil Liberties Foundation & Prof., Law, Fordham U. School of Law), *CONNECTICUT LAW REVIEW*, September 2017, 1593-1594.

Facial recognition has long triggered anxieties about a dystopian world. In the 2002 film *Minority Report*, Tom Cruise plays a hero in a world where there is no place to hide because facial recognition (and iris scanning technologies) allows the government to identify every person as they go about their daily lives. In such a world, there is no room for free speech, free thought, dissent, or human rights.



# POLICING: BAN PREDICTIVE POLICING TECHNIQUES

- Predictive policing software perpetuates racial discrimination in policing.
- Current privacy laws exempt police use of data systems.
- Banning predictive policing methods is essential to the elimination of racial discrimination in policing.

Andrew Ferguson, (Prof. Criminal Law & Procedure, Clarke School of Law), *THE RISE OF BIG DATA POLICING: SURVEILLANCE, RACE, AND THE FUTURE OF LAW ENFORCEMENT*, 2017, 124.

The danger is that these algorithms, which are trained on data produced by people, may reflect the biases in that data, perpetuating structural racism and negative biases about minority groups. Big data policing involves a similar danger of perpetrating structural racism and negative biases about minority groups. "How" we target impacts "whom" we target, and underlying existing racial biases means that data-driven policing may well reflect those biases.





# POLICING: REFORM JURISDICTION IN INDIAN COUNTRY

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- Sexual violence and other forms of criminal victimization are rampant in Indian Country.
- Current U.S. law imposes jurisdictional limits on tribal police, preventing them from protecting citizens in Indian Country.
- Abolishing jurisdictional limits protects vulnerable citizens in Indian Country.

Angela Riley, (Prof., Law, UCLA School of Law), *UCLA LAW REVIEW*, July 2016, 1615.

Indian country suffers from gross neglect, characterized by a long history of federal law that attempted to make Indians literally and conceptually invisible, through policies of failed assimilation and geographic confinement. Today, federal limitations are as much legal as geographical, as tribes have found themselves trapped in a "maze" of criminal justice where the federal government has failed to provide the concomitant protections required to satisfy its trust responsibility to Indian tribes.





## **POLICING: REFORM MILITARY-STYLE POLICING**

- The "warrior-mentality," prominent in U.S. law enforcement agencies, perpetuates police mistreatment of citizens.
- The federal government currently provides military equipment and training to local law enforcement agencies.
- Ending the federal government's 1033 Program will limit the militarization of U.S. policing.

Friends Committee on National Legislation, STOP MILITARIZING LAW ENFORCEMENT, 2019.  
Retrieved Apr. 3, 2020 from <https://cqrcengage.com/fcnl/app/write-a-letter?2&engagementId=501098>.

This militarization of law enforcement only makes matters worse. The Stop Militarizing Law Enforcement Act (H.R. 1714) would place much-needed limits on transfers of deadly and militarized equipment to local police departments to ensure they are serving communities not occupying them.





# POLICING: REFORM THE POLICING OF IMMIGRANTS

- The federal government's criminalization of immigrant policing divides families and devastates communities.
- The Trump administration continues to intimidate states and localities to join in the enforcement of federal immigration law.
- Abandoning the criminalization of immigration enforcement is a vital step in avoiding the dehumanization of the most vulnerable among us.

Alex Vitale, (Prof., Sociology, Brooklyn College), *THE END OF POLICING*, 2017, 194.

Border policing is hugely expensive and largely ineffective, and produces substantial collateral harms including mass criminalization, violations of human rights, unnecessary deaths, the breakup of families, and racism and xenophobia.





# POLICING: REFORM THE POLICING OF JUVENILES IN SCHOOLS

- The use of School Resource Officers (SROs) is a major cause of the school-to-prison pipelines and the criminalization of minor offenses.
- Existing federal programs incentivize the presence of SROs in U.S. schools.
- Removing SROs will help end the school-to-prison pipeline.

Erin Archerd, (Prof., Law, U. of Detroit Mercy School of Law), U. OF CINCINNATI LAW REVIEW, December 2017, 762.

Criminalization of minorities and people with disabilities begins early. It begins in school. This "school-to-prison pipeline" is exacerbated by the presence of police in schools, commonly known as "school resource officers" or "SROs." Schools' use of SROs has grown in response to perceived threats to student safety, but this growth has also coincided with a rise in those schools' disproportionate and harsh punishment of students of color and students with disabilities.





# POLICING: REFORM POLICE USE OF CIVIL ASSET FORFEITURE

- Police use of civil asset forfeiture imposes unacceptable financial burdens on innocent citizens.
- The Trump administration has reversed the limits on civil asset forfeiture that were established in the Obama administration.
- The police use of civil asset forfeiture should be banned.

Joe Carter, (Analyst, Acton Institute), EXPLAINER: WHAT YOU SHOULD KNOW ABOUT CIVIL ASSET FORFEITURE, July 21, 2017. Retrieved Apr. 4, 2020 from Nexis Uni.

Equitable sharing allows state and local law enforcement to team with the federal government to forfeit property under federal law instead of state law. Participating agencies allow the federal government to keep some of the proceeds from the sale of the seized property, though they may receive up to 80 percent for themselves. In 2015, President Obama ended the Equitable Sharing Program, but it was reinstated this month by the Trump administration. In fiscal year 2016, the states received \$314,983,323 in cash and sale proceeds from the federal equitable sharing program.





# POLICING: REFORM SURVEILLANCE IN MUSLIM COMMUNITIES

- Federal agencies engage in significant programs of surveillance in U.S.-based Muslim communities.
- Surveillance in Muslim communities violates privacy and undermines the effort to limit international terrorism.
- Intensive federal surveillance in Muslim communities should be ended.

Katelyn Ringrose, (JD Candidate, U. of Notre Dame Law School), U. OF ILLINOIS LAW REVIEW, Spr. 2019, 2.

Anti-Muslim bias leading to government surveillance of chat rooms, websites, and social media is particularly problematic as research contradicts the notion that reliable indicators exist to identify would-be terrorists or other security threats. In the absence of such indicators, the government is scrutinizing and penalizing religious affiliation. The path to radicalization is neither predictable nor religious. The American government's approach to radicalization has been chiefly informed by stereotypes and misinformation





# POLICING: REFORM POLICING OF VIOLENCE AGAINST WOMEN

- Domestic violence is an epidemic in the United States.
- Under current law, police cannot be held responsible for failure to enforce restraining orders.
- Enforcement of restraining orders is essential to reducing the epidemic of domestic violence.

Jill Engle, (Prof., Law, Penn State Law School), *GEORGETOWN JOURNAL OF GENDER AND LAW*, Spr. 2016, 597.

In a nation where just a few decades ago marital rape remained legal in several states, surely we can quiet the pleas and protests for good. The Supreme Court should crystallize a new dimension of freedom, as clarified so eloquently in *Obergefell*, for victims of domestic violence by overturning *Castle Rock* and guaranteeing them the protections from law enforcement that due process liberty demands.





# SENTENCING: ABOLISH THE DEATH PENALTY

- The death penalty discriminates based on race.
- A majority of the states and the federal judicial system continue to maintain death penalty statutes.
- The Supreme Court ought to rule that the death penalty violates the 8<sup>th</sup> Amendment ban on cruel and unusual punishment.

Brandon Garrett, (Prof., Law, Duke U.), END OF ITS ROPE: HOW KILLING THE DEATH PENALTY CAN REVIVE CRIMINAL JUSTICE, 2017, 84.

In the years since, David Baldus and many other researchers have done study after study in nearly every death penalty state, all reaching the same troubling findings: the race of the victim defines who gets sentenced to death. The U.S. Senate asked the General Accounting Office to review the literature; they found race effects in 80 percent of the studies. In a more recent review, over 90 percent of cases had effects based on the race of the victim, and an American Bar Association assessment of death sentences in major death penalty states found racial disparities in every case.





# SENTENCING: ELIMINATE USE OF IMPRISONMENT FOR DRUG USERS

- Drug offenses are a major driver of mass incarceration in the federal system.
- Mass incarceration is significantly harmful.
- Community corrections and/or treatment ought to replace imprisonment for drug offenses.

John Pfaff, (Prof., Law, Fordham Law School), LOCKED IN: THE TRUE CAUSES OF MASS INCARCERATION AND HOW TO ACHIEVE REAL REFORM, 2017, 189.

While people with drug convictions make up about 16 percent of state prisoners, they make up approximately 49 percent of federal prisoners. The federal system is also distinctly more punitive in general, and especially so when it comes to drugs.



# SENTENCING: ABOLISH MANDATORY MINIMUM SENTENCING

- The mass incarceration system is significantly harmful.
- Current reforms, such as the FIRST STEP Act, fail to address the problem: Mandatory minimum sentencing remains.
- The use of mandatory minimum sentencing ought to be abolished.

Harold Baer, (Federal District Court Judge), REHABILITATION AND INCARCERATION: IN SEARCH OF FAIRER AND MORE PRODUCTIVE SENTENCING, 2019, 38-39.

We need to reduce, if not eliminate, mandatory minimum sentences. These have proven to be draconian and their inflexibility has caused injustices that might have been avoided had sentencing judges instead had the ability, within appropriate limits, to craft a sentence tailored to the offender and the offense. Justice Stephen Breyer, the author of the remedy opinion in Booker, said of mandatory minimum sentences that they are "a terrible idea."



# SENTENCING: LIMIT PROSECUTOR POWER IN PLEA BARGAINING

- Plea bargaining induces innocent persons to plead guilty.
- Prosecutors have excessive power in the plea bargaining process, unduly limiting judge discretion in the sentencing process.
- Judges should oversee the plea bargaining process.

Erwin Chemerinsky, (Distinguished Prof. of Law, U. California at Berkeley), *CRIMES AND PUNISHMENTS: ENTERING THE MIND OF A SENTENCING JUDGE*, 2019, ix.

I am troubled by the great shift in the power to determine sentences from judges to prosecutors. This change in the law has not received nearly enough attention. Prosecutors are partisans in our criminal justice system. No matter how much it is said that a prosecutor's role is to secure justice, they see sentencing from their own perspective. It is far better to have sentencing decisions in the hands of judges, but that is very much lessened when the prosecutor's charging decisions make all the difference in terms of the punishment imposed.





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