In response to the pandemic, jails and prisons underwent the largest recorded one-year population reduction in U.S. history. However, pandemic-related decarceration further exacerbated preexisting racial disparities in the system. Additionally, because the strategies for decarceration were not codified into long-term policy, jail and prison populations are increasing and quickly approaching pre-pandemic levels.

We now have an opportunity to learn from past mistakes and decarcerate in a systematic and sustained fashion to ensure racial equity and lasting change.

This action plan focuses on adapting and improving strategies that already occurred in 2020 in response to the pandemic. We focus on these strategies because pandemic decarceration demonstrated that these changes can be made quickly and safely with no documented negative impact on public safety. However, as implemented, these strategies were insufficient and exacerbated racial disparities. So, below, we apply a racial equity lens to improve upon these approaches through systematic policy-based strategies for equitable and sustained decarceration.

4 STEP ACTION PLAN

1. Decriminalize or decline to arrest and prosecute low-level offenses.

2. Eliminate money bail.

3. Eliminate incarceration due to probation or parole violations.

4. Reform sentencing practices.

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**DECRIMINALIZE OR DECLINE TO ARREST AND PROSECUTE LOW-LEVEL OFFENSES.** In 2020, police officers in many jurisdictions were temporarily discouraged from making arrests for low-level or quality-of-life offenses (e.g., theft, drug possession, and vandalism) to curb the spread of COVID-19 in jails. Police and prosecutors have an opportunity to enact permanent policies to decline to arrest and prosecute offenses that are unrelated to public safety. Without formal policies, there is a high risk of discretion exacerbating racial disparities. When District Attorney Rachael Rollins was elected in Suffolk County, MA (Boston) in 2018, she announced the office would not prosecute low-level misdemeanor offenses, citing how these offenses were primarily driven by poverty, mental health, and substance use — issues that are better addressed outside the criminal legal system. A study of this policy change found that people not prosecuted had fewer future arrests than those who were prosecuted, and the policy did not result in an increase in crime. Lawmakers can also codify these changes through legislation by moving to decriminalize these types of offenses. If these systematic decriminalization or declination policies are not formally instated, Black people will continue to disproportionately suffer from discretionary arrest and prosecution decisions as racial bias, including implicit bias, infects these discretionary decisions.

**ELIMINATE MONEY BAIL.** To reduce the use of jail detention during the pandemic, several jurisdictions released people who were held in jail for the sole reason that they were unable to pay bail and/or set bail at zero for certain types of offenses. The rationale was that no one should be held in jail, facing exposure to a deadly virus, simply because they cannot afford bail. This begs the question of why anyone should be held in jail solely because they cannot afford bail even in non-pandemic circumstances. However, these changes were temporary, and money bail is still used to detain pretrial people who have not been convicted of a crime and thus presumed innocent, and continues to be a driver of racial disparities in jail detention. In 2021, Illinois became the first state to abolish money bail, paving the way for more states to end this discriminatory practice. Importantly, strategies to eliminate money bail should avoid replacing the practice with the use of risk assessment tools, which also perpetuate racial discrimination.

**ELIMINATE INCARCERATION DUE TO PROBATION OR PAROLE VIOLATIONS.** Far fewer people were incarcerated for a probation or parole violation in 2020 compared to 2019, due primarily to informal, reactionary changes such as agency closures and reductions in reporting requirements. Again, this can be adapted into a systematic policy change to eliminate incarceration due to a probation or parole violation, especially for technical violations, such as missing an appointment or curfew. There is no evidence to suggest that incarceration as a sanction for probation or parole violations has any positive impact on future risk of violations. Systematic implementation of this policy is likely to address racial disparities because Black people are more likely to have technical violations while on probation and are more likely to be rearrested while on probation. These disparities are likely explained by discrimination in the system (e.g., higher levels of police surveillance and stops in Black neighborhoods) and social and structural discrimination that increases the likelihood of violations (e.g., housing instability). As with other sentencing disparities, Black people are also more likely to be incarcerated for probation violations than White people. Additionally, reforms can be made to probation and parole to reduce the risk of reincarceration, such as reducing the length and conditions of community supervision sentences and sentencing fewer people to probation in favor of less punitive alternatives.

**REFORM SENTENCING PRACTICES.** While pandemic decarceration was driven more by reduced admissions than increased releases, courts shortened sentences and granted early releases in some cases. There is no evidence to suggest these sentence reductions and releases negatively impacted public safety. The U.S. prison system is characterized by extremely long sentences, which are often enforced by mandatory minimum sentencing laws. One in every nine people in a U.S. prison is serving a life sentence, half of whom are Black. Additionally, Black men are more likely to be sentenced to incarceration and to receive longer sentences than White men convicted of similar crimes. There are several sentencing reforms that would advance racially equitable decarceration, including eliminating life sentences, mandatory minimum sentences, and habitual offender laws, all of which disproportionately punish Black people in the system.

Hyperlinks accessible at: bit.ly/DecarcerationPlan