



THE POWER OF PROSECUTORS

A platform for Smart Justice

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Dear Candidate

Michigan is in the midst of an incarceration crisis that is tearing apart families, exacerbating racial injustice, and costing the state billions—while at the same time failing to improve public safety. No single person in Michigan has as much power to bring this crisis to an end as the prosecuting attorney.

As a candidate for this powerful elected office, you have the unique ability to lead Michigan into an era of smart and fair policies that can safely reduce Michigan's jail and prison populations and at long last, confront and eliminate the systemic racial disparities that devastate communities of color and burden our criminal legal system.

Utilizing a rigid and overly harsh sentencing structure, decisions made every day by prosecutors cause Michigan to stand out for its overreliance on incarceration, long prison sentences, and lack of access to diversion and treatment programs. As a result, Michigan's prison population skyrocketed an astounding 172% between 1980 and 2016.¹

Race-biased policing and prosecution along with unforgiving sentencing laws have taken a heavy toll on communities of color in our state. In 2014, Black people in Michigan were imprisoned at nearly seven times the rate of white people. Nearly one in 21 Black men were incarcerated in 2014.²

This briefing book is being sent to all candidates for prosecuting attorney in Michigan. In it, we outline critical policy reforms necessary to achieve a safe and effective pathway to ending mass incarceration and eliminating racial injustice in our criminal legal system.

Your voters are ready for these changes.

An April 2020 poll conducted by Change Research and the ACLU of Michigan shows that voters statewide overwhelmingly support county prosecutor candidates who will commit to ending mass incarceration and confronting racism in the criminal legal system.

Through its Campaign for Smart Justice, the ACLU of Michigan is educating and empowering voters to use their power to elect a reform-minded prosecuting attorney who aligns with their values. Our goal is to ensure all prosecutorial candidates are pressed on their commitment to pursue justice over racking up convictions. We look forward to working with you and all the prosecutorial candidates to build a criminal legal system that is fair, just, and safe for everyone.

Sincerely,

Dave Noble
Executive Director, ACLU of Michigan



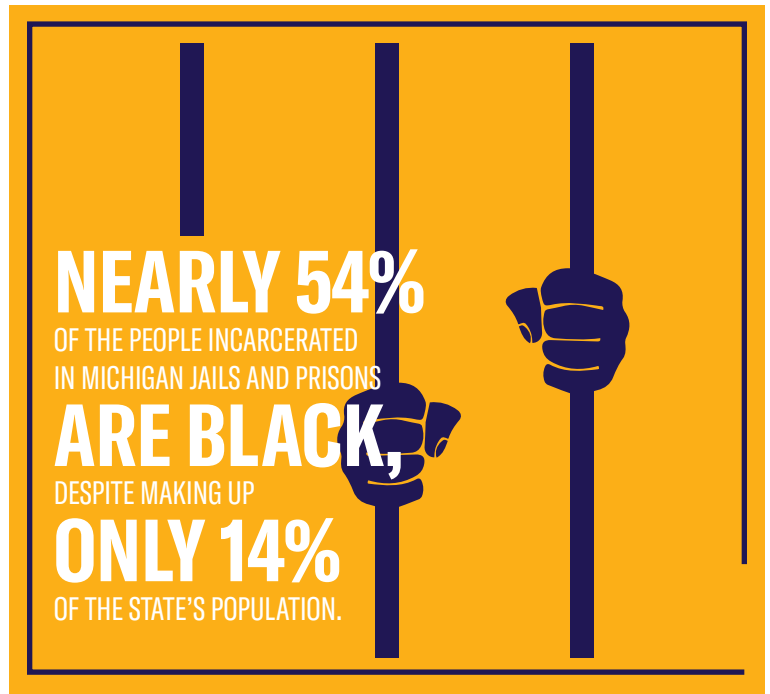
Who We Are

The ACLU of Michigan Campaign for Smart Justice is an unprecedented, multi-year effort to challenge racism in the criminal legal system and reduce the jail and prison population by 50%. Our team is made up of people who've been incarcerated in Michigan, community leaders, organizers, attorneys, policy experts, and ACLU supporters. With nearly 40,000 members and supporters, the ACLU of Michigan works tirelessly to defend and protect the rights of all Michiganders.

Why We Must End Mass Incarceration

Our criminal legal system is defective. With more than 2.2 million people sitting behind bars every day, the United States incarcerates more people in absolute numbers and per capita than any other nation in the world. In 2017, there were close to 11 million admissions to county jails across the United States, which is 17 times the number of people sent to state and federal prison. Black and Latinx people represent close to 56% of the adult prison population, yet make up just 28% of the nation's population.³

In Michigan, the prison population skyrocketed—growing by 172% between 1980 and 2016.⁴ In 2017, Michigan had the seventh highest rate of correctional control in the United States.⁵ Due to our harsh and unforgiving sentencing laws, Michigan's incarcerated residents serve some of the longest sentences in the country. Michigan's Black and Brown communities suffer the most from our incarceration crisis. Of the 64,000 people incarcerated in Michigan jails and prisons, nearly 54% are Black, despite making up only 14% of the state's population. Black residents are six times more likely to be incarcerated than white people.⁶



Too many of those incarcerated have underlying issues that are not being addressed while they are behind bars. A 2010 University of Michigan study found that 77% of the male general prison population had mental health symptoms for which no services were available, and 86% of the Michigan prison population were identified as having a history of substance use disorder. This same study estimated that two-thirds of people in prison who were experiencing mental health symptoms were not receiving services.⁷

While the size of Michigan's prison population is one indication of mass incarceration, our arrest rates and jail admissions also drive mass incarceration. In 2016, 10.6 million people were locked up in local jails with an average of 731,300 people sitting in a jail cell on any given day.

And nearly 60% of those residents in jails are being held pre-trial, meaning they have not been convicted of a crime. Over the past 40 years the number of people in Michigan's jails nearly tripled. We know the growth is not driven by increasing crime, as crime rates have dropped to 50-year lows. And, nearly a quarter of all people entering Michigan jails had a serious mental illness.⁸

We have the tools to reduce jail admissions. Michigan law gives police officers discretion to issue criminal citations in lieu of arrest for certain low level misdemeanors. Unfortunately, the law gives no guidance on when to cite rather than arrest and law enforcement uses the option sparingly. Michigan State Police data shows that among common low level misdemeanors, citations were used only a quarter of the time.

Moreover, in looking at 2018 jail data, nearly half of all criminal cases were traffic violations, a category for which citations would appear to be more appropriate.

Michigan can do better. As a matter of fact, we can't afford to continue down this path. The Michigan Department of Corrections spent more than \$2 billion in 2016 on corrections costs. Locally, Michigan taxpayers spent \$478 million on county jails, ensnaring thousands of people who likely are not a threat to society, wasting precious dollars that could be used on crime prevention, education, and mental health services.

Michigan must do better. Mass incarceration, due to ill-conceived policies and harsh laws, has deepened the decades-long systemic racial injustice that undergirds our criminal legal system, shattering neighborhoods and separating families, all with no evidence of improved public safety.

Kimiko Uyeda's Story

Kimiko Uyeda was a single mother, business owner, and ran a special needs horse riding program when in 2013 she was arrested for filing what the local sheriff believed to be a false police report. Because of broken sentencing laws, the prosecutor in the case piled on, adding four frivolous criminal charges that resulted in Ms. Uyeda facing up to 20 years in prison. Ms. Uyeda ultimately served six years, even though legal experts say she should have only faced probation. Since being released, Ms. Uyeda has been reunited with her son, rebuilt her business, and has become an activist in advocating for a fair and just criminal legal system.



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Prosecuting Attorneys Can Embrace Smart Justice Prosecutor Values

Prosecuting attorneys in Michigan have more opportunity and power than any other elected official to make immediate changes to reduce incarceration rates and to combat the systemic racism that characterizes our carceral system. A prosecuting attorney determines the policies and procedures that dictate how cases are prosecuted in a county, how diversion programs are implemented, how plea deals are negotiated, and ultimately how many residents sit behind bars.

Importantly, prosecutors are influential at the state legislature and can use their collective voice to encourage lawmakers to pass sensible, effective, bipartisan criminal legal reforms while rejecting proposed laws that take us backward—the way current laws like mandatory minimum sentences, harsh habitual-offender statutes, and unnecessary sentencing enhancements have wreaked havoc on communities and strained our criminal legal system.

Many prosecuting attorneys across the nation are doing exactly this. A movement of recently elected reform-minded county and district attorneys implemented bold policies on the first day of their administrations—which is evidence that voters are ready for these changes. These positive changes have had an immediate impact reducing jail and prison populations and created a structural framework to tackle racism in the criminal legal system.

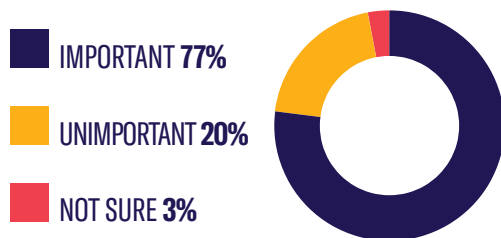
The welcome wave of transformational prosecutors is supported nationally by professional groups that provide policy advice and camaraderie for prosecutors committed to implementing a reform agenda. Organizations like Fair and Just Prosecution, Institute for Innovation in Prosecution, Prosecutor Impact, and others are helping newly-elected prosecutors succeed in reducing incarceration and tackling racial injustice.

Voters are Ready for Reform

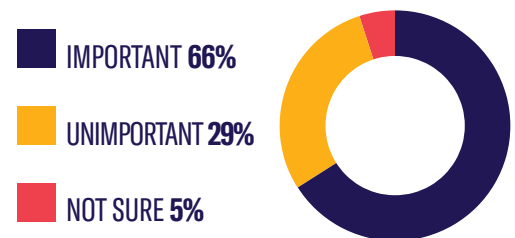
The ACLU of Michigan partnered with Change Research in April 2020 to conduct a public opinion poll of likely Michigan voters. The results below and throughout the briefing book demonstrate that voters are ready for prosecutors to embrace smart justice values.

In Michigan, the prosecuting attorney in each county sets local policy about whether someone should be charged with a crime, whether a person should be locked up in jail while they await trial, and whether a person convicted of a crime will be sent to prison or offered a second chance. They also influence the passage of local and state criminal laws. Please indicate how important each of the following duties should be for your county prosecuting attorney to prioritize.

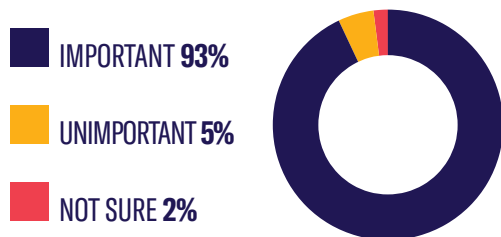
COMBATING RACISM IN THE CRIMINAL JUSTICE SYSTEM



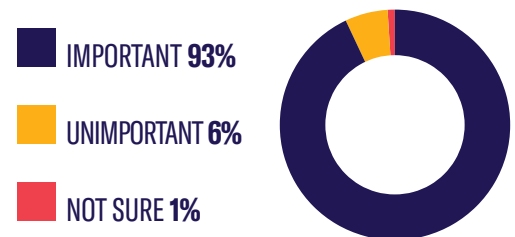
REDUCING TAX DOLLARS SPENT ON JAILS AND PRISONS



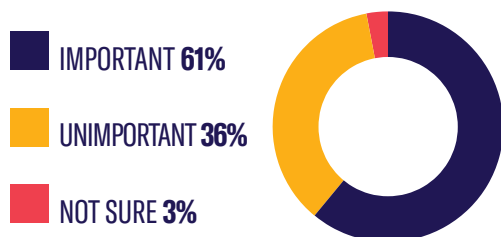
PROMOTING TRANSPARENCY BY SHARING DATA, PUBLIC INFORMATION, AND POLICIES WITH THE PUBLIC



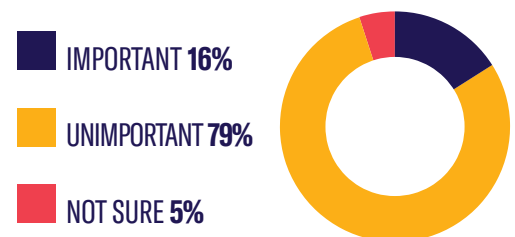
REDUCING CRIME



REDUCING THE NUMBER OF PEOPLE LOCKED UP IN PRISONS AND JAILS



PROSECUTING TRAFFIC VIOLATIONS AS CRIMINAL CASES



Smart Justice Policy Recommendations for Prosecuting Attorney Candidates

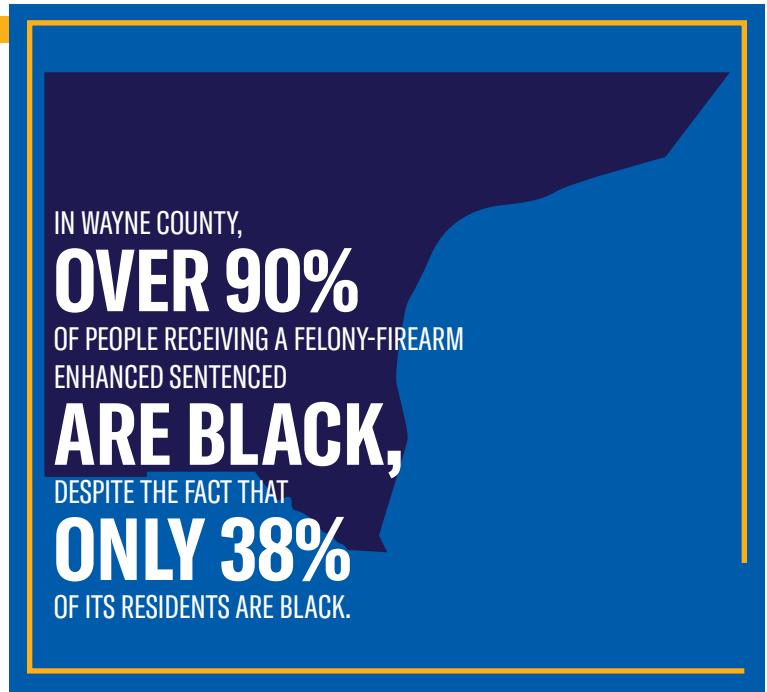
The ACLU of Michigan recommends prosecuting attorneys focus on implementing reforms in five areas: racial justice, decarceration, pre-trial reform, juvenile justice, and transparency. For each area, we suggest specific policy reforms and public commitments, providing examples where similar policy reforms have been undertaken by local prosecutors across the country.

Racial Justice

Michigan's criminal legal system unfairly targets and incarcerates people of color. And we know that prosecutorial policies and actions often exacerbate these disparities. For instance, in Wayne County, over 90% of people receiving a felony-firearm enhanced sentenced are Black, despite the fact that only 38% of its residents are Black.⁹

PATHWAYS TO REFORM

- Publicly acknowledge that racial disparities exist in the criminal legal system.
- Undertake uniform and consistent collection, analysis, and publication of race and ethnicity data.
- Commit to implementing policies and staff training aimed at behavioral changes that will eliminate racial disparities uncovered by the data collection.
- Decline to prosecute cases where arrests are tainted with significant racial bias and work with law enforcement to change the culture and reduce incidences of racial bias.
- Require racial impact analysis prior to charging decisions.

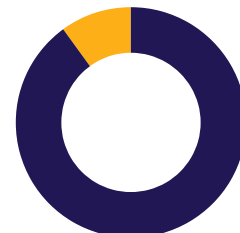
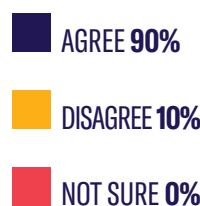


WHERE IT'S BEEN DONE

In 2015, John Chisholm, Milwaukee County District Attorney, joined forces with the Vera Institute of Justice to examine how his office was contributing to racial disparities in the justice system. They found that prosecutors in Milwaukee declined to prosecute 41% of whites arrested for possession of drug paraphernalia, compared with only 27% of Black residents. In light of these findings, Chisholm stopped prosecuting most paraphernalia cases and began referring defendants to treatment programs instead. The program cut in half the number of Black residents who have been imprisoned in Milwaukee County since 2006.¹⁰

Since 2016, Santa Clara County, California's prosecutor's office has released an annual "Race and Prosecution Report" to shine light on the incidence of racial disparities in the county's prosecuted population. These reports analyze the process from when a case arrives at the office, when it is charged, and how it is charged—breaking down each of these decisions through a racial and ethnic lens. By collecting, analyzing, and releasing this data annually, the office is inviting the public to see its flaws, but also its progress.¹¹

"NO MATTER YOUR RACE OR ETHNICITY, EVERYONE SHOULD BE TREATED FAIRLY UNDER THE LAW. PROSECUTORS IN MICHIGAN SHOULD IDENTIFY RACIAL DISPARITIES WHERE THEY EXIST AND LOOK FOR SOLUTIONS."



Decarceration

Michigan's incarceration skyrocketed between 1980 and 2016—growing by 172%. Prosecutors can and should lead the way to meaningfully reduce Michigan's jail and prison population. This requires a well-planned, intentional, and aggressive effort.

PATHWAYS TO REFORM

- Commit to a specific, measurable decarceration goal.
- Invest in diversion programs for both felony and misdemeanor charges and implement a plan to fund diversion programs for indigent defendants.
- Eliminate the coercive nature of the plea bargaining process by offering pre-plea open file discovery before negotiating, excluding waivers of constitutional rights, and avoiding as many collateral consequences as possible triggered by the plea deal.
- End the practice of using prior felony convictions to enhance prison sentences.
- Advocate for the automatic expungement of marijuana convictions that are now legal.
- Adopt policies from the [Michigan Task Force on Jails and Pretrial Incarceration](#) where possible, and work with other system stakeholders to implement these policies.
- End the prosecution of low-level crimes, including loitering and trespassing.

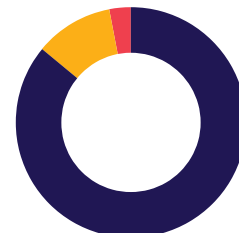
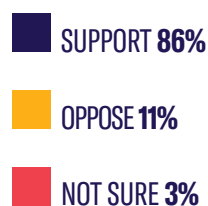
WHERE IT'S BEEN DONE

Dallas County District Attorney John Creuzot ran on a promise to decrease jail and prison admissions by 15-20% within four years. Shortly after his election, his office stopped prosecuting theft of necessary items under the value threshold of \$750.¹²

Since taking office in 2016, Cook County District Attorney Kim Foxx has declined to prosecute more than 5,000 cases that would have otherwise been pursued by her predecessor. Foxx did this by diverting people into treatment programs and declining to prosecute low-level shoplifting and drug cases.¹³

Prosecuting Attorney Dan Satterberg of Seattle has been resentencing people in prison who are serving a life sentence for relatively minor crimes. Often, these individuals are in prison under a three strikes law. Satterberg and his staff review old cases and sign onto clemency petitions where appropriate. So far, Satterberg and his committee have re-sentenced 16 people who were unfairly incarcerated. "I think a prosecutor has a continuing obligation to justice, past the sentencing date," he said.¹⁴

"IMPLEMENT PROGRAMS THAT DIVERT PEOPLE WITH SUBSTANCE ABUSE OR OTHER MENTAL HEALTH PROBLEMS TO TREATMENT CENTERS, INSTEAD OF SENDING THEM TO JAIL OR PRISON WHERE THEIR PROBLEMS GET WORSE."



Pre-Trial Reform

Nearly 60% of the people in Michigan jails are behind bars on pretrial detention and have not been convicted of a crime. Michigan law states that cash bail should only be set in cases where the person is a flight risk or poses a danger to society, yet thousands of people are detained for days, weeks, and months simply because they can't afford to pay cash bail. Prosecutors can help reduce the number of people held pretrial by supporting and adopting the [Michigan Task Force on Jail and Pretrial Incarceration](#) recommendations.

PATHWAYS TO REFORM

- Stop recommending that judges set cash bail and instead use other proven tools to ensure compliance with the system.
- Release people jailed pre-arraignment and seek appearance before a judicial officer within 24-48 hours for anyone still detained.
- Strengthen the presumption of release on personal recognizance and set higher thresholds for seeking non-financial and financial conditions.
- Seek only the least restrictive conditions of release necessary.
- Preserve the speedy trial rights of defendants by refusing to seek delays in trials, and dismiss cases that are delayed beyond 18 months.
- Eliminate the consideration of racially disparate factors in pretrial recommendations.

WHERE IT'S BEEN DONE

Philadelphia District Attorney Larry Krasner stopped seeking cash bail for most offenses. In one year, 1,750 people who otherwise would have been behind bars because they couldn't afford bail were released, marking a 24% drop in Philadelphia's jail population. There was no negative impact on court attendance and no increased recidivism while those released were awaiting trial at home.

San Antonio District Attorney Joe Gonzales expanded the county's "cite and release" program, where defendants avoid jail in favor of a diversion program, to include lower level offenses like misdemeanor theft and driving with an invalid license. Gonzales also directed his office to allow the release of defendants on personal recognizance absent a finding of flight or public safety risk.¹⁵

"NEARLY 60% OF THE PEOPLE IN MICHIGAN'S JAILS HAVE NOT EVEN BEEN CONVICTED OF A CRIME. PROSECUTORS CAN AND SHOULD TAKE ACTIONS TO REDUCE THE NUMBER OF PEOPLE WHO ARE DETAINED BEFORE TRIAL."



Jessica Preston's Story

Jessica Preston was eight months pregnant when she was arrested in Macomb County for driving with a suspended license in March 2016. Too poor to make bail, she was put behind bars. Five days after being jailed, what was already considered a high risk pregnancy became infinitely riskier when she went into labor while locked behind bars. Ignoring her repeated claims that she was going into labor, jail personnel refused to call an ambulance. Instead, she was forced to give birth on a mat placed on what was described as a “filthy” jailhouse floor.



Juvenile Justice

Prosecutors assert a lot of influence on how young people are treated in the criminal legal system. They make charging decisions, determining whether a young person will be tried as an adult and ultimately, if and for how long a young person is incarcerated. We know that most people who engaged in risky behavior or criminal activity in their youth don't continue to do so as adults. That is why the United States Supreme Court in a series of landmark decisions declared that mandatory life sentences for juveniles are unconstitutional and directed the resentencing of all juvenile lifers. In its decision, the Court warned that only in "rare and unusual" cases should a juvenile be sentenced to life without parole. It is taking years for Michigan to resentence the 360 people serving life without parole sentences for crimes they committed as children. And some prosecutors ignored the "rare and unusual" warning—Oakland County recommended that 43 of a total 48 cases be resentedenced to life without parole. Prosecutors should lead the way by treating youth through a lens of treatment and rehabilitation, seeking to minimize their contact with the criminal legal system.

PATHWAYS TO REFORM

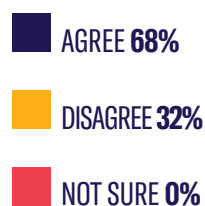
- Refuse to prosecute youth for typical adolescent behavior and establish non-criminal diversion programming where appropriate.
- Stop seeking life sentences, and advocate against life without parole for juveniles.
- Eliminate waivers of juveniles into adult court.
- Ensure juveniles resentedenced to life without parole have the opportunity for release.

WHERE IT'S BEEN DONE

The Harris County, Texas District Attorney's Office has vastly changed how its office reacts to juvenile behavior, working early on with police to determine if a young person should be arrested at all. In making that decision, the office policy requires prosecutors not to simply focus on whether they could prove the case, but to also consider whether this is typical behavior for that age, whether they have any disabilities, and their child welfare status. Rather than opting to arrest young people, prosecutors usually divert them into community-based programs. One of these diversion programs, for example, is available for all minors who would otherwise be arrested for their first misdemeanor or nonviolent felony—and has an 87% success rate of no arrests by age 18.¹⁶

In February 2020, 30 elected prosecutors—including Ingham County Prosecuting Attorney Carol Siemon and St. Louis County Prosecuting Attorney Wesley Bell—joined dozens of other criminal justice leaders in signing an amicus curiae brief to the Eighth Circuit Court of Appeals, urging it to support the due process rights of people in Missouri who were sentenced to life without parole as children. Miriam Krinsky, Executive Director of Fair and Just Prosecution, argued: "We know that children are fundamentally different than adults... justice and the law dictate that we revisit these sentences and evaluate them through a process that is fair and transparent and creates opportunities for individuals sentenced as children to return to their communities."¹⁷

"KIDS CONVICTED OF SERIOUS CRIMES SHOULDN'T BE CONDEMNED TO SPEND THE REST OF THEIR LIFE AND DIE IN PRISON, AND SHOULD HAVE A SHOT AT A SECOND CHANCE. PROSECUTORS SHOULD SUPPORT ENDING JUVENILE LIFE WITHOUT PAROLE SENTENCING AND GIVE THEM THEIR CHANCE TO BE RELEASED."



Bobby Hines' Story

Bobby Hines was 15 years old in 1989 when he and a few of his friends were involved in an argument with other teenagers that ultimately led to one of Mr. Hines's co-defendants firing several shots and fatally wounding one and injuring another. Despite the fact that Mr. Hines never touched the murder weapon used in the crime, Mr. Hines was convicted of felony homicide and sentenced to life without parole. Mr. Hines's co-defendant who supplied the gun was able to plead to a 2nd Degree Assault with Intent and received a parolable sentence. Mr. Hines has been in prison for almost 20 years. He has earned his GED and vocational qualifications.



Transparency

Too little information is made public about how a prosecutor's office operates, how many cases are charged, how many plead, and who is diverted. This lack of transparency prevents Michigan residents and voters from being able to evaluate how their elected officials are aligning with community values and how taxpayer funds are being utilized. Fully transparent policies, practices, and outcomes enable public understanding of the prosecutor's role and job performance and allow voters to hold their prosecutors accountable.

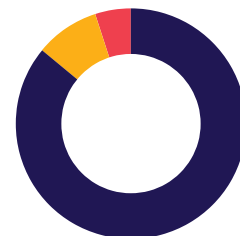
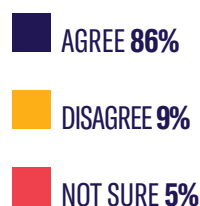
PATHWAYS TO REFORM

- Systematically gather and publish quarterly statistics on race, ethnicity, and gender of defendants along with information about charging decisions, convictions, deferred prosecutions, and diversion program placements.
- Create a Conviction Integrity Unit that reviews innocence claims, due process violations, corrupt law enforcement practices, and excessive sentences.
- Implement a policy of open file discovery through which defendants or their attorneys have timely access to the prosecutor's entire files.
- Create a community advisory board that represents impacted communities including immigrant communities, formerly incarcerated communities, communities of color, and the LGBTQ+ community to determine the priorities of the prosecutor's office.
- Publish all office policies and protocols online.

WHERE IT'S BEEN DONE

Cook County State's Attorney Kim Foxx released six years' worth of case-specific prosecutorial data. The data was released online and easily accessible, allowing the public to sort through a case from beginning to end. Foxx also directed her office to strengthen the Conviction Integrity Unit, which so far has overturned convictions in 80 cases, including 15 cases involving police misconduct.¹⁸

"PUBLISH STATISTICS SO THE PUBLIC CAN SEE HOW PROSECUTORS ARE CHARGING AND SENTENCING PEOPLE TO PRISONS, INCLUDING ANY RACIAL OR GENDER DISPARITIES."





Conclusion

Michigan voters are ready for real reform that will confront and dismantle racial disparities in Michigan's criminal legal system and end mass incarceration. As a candidate for prosecuting attorney, you have the power to transform Michigan's criminal legal system. Through a commitment to racial justice, decarceration, pre-trial reform, juvenile justice, and transparency, you can help bring Michigan into an era of smart justice.

Endnotes

- 1 American Civil Liberties Union. (2018). Blueprint for Smart Justice: Michigan.
- 2 American Civil Liberties Union. (2018). Blueprint for Smart Justice: Michigan.
- 3 American Civil Liberties Union. (2018). Blueprint for Smart Justice: Michigan.
- 4 American Civil Liberties Union. (2018). Blueprint for Smart Justice: Michigan.
- 5 American Civil Liberties Union. (2018). Blueprint for Smart Justice: Michigan.
- 6 The Sentencing Project, Report to the United Nations on Racial Disparities in the U.S. Criminal Justice System. (2018).
- 7 American Civil Liberties Union. (2018). Blueprint for Smart Justice: Michigan.
- 8 Michigan Joint Task Force on Jail and Pretrial Incarceration. (2020). Report and Recommendations.
- 9 Analysis of data from the Michigan Department of Corrections. Oct. 2018.
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- 11 Santa Clara County District Attorney's Office. (2017). [Race and Prosecutions: 2017 Update](#).
- 12 [ACLU of Texas Comment on Dallas County District Attorney-Elect John Creuzot Victory](#), Nov. 6, 2018.
- 13 The Marshall Project, [The Kim Foxx Effect: How Prosecutions Have Changed in Cook County](#), Oct. 24, 2019.
- 14 The Marshall Project, [The DAs Who Want to Set the Guilty Free](#), March 20, 2018.
- 15 Bexar County, [Update on New DA Policies and Initiatives](#), May 16, 2019.
- 16 Annie E. Casey Foundation, [Webinar Highlights Prosecutor-Led Juvenile Justice Reforms](#), Feb. 25, 2020.
- 17 Fair and Justice Prosecution, Press Release, [Elected Prosecutors Call for Relief for Individuals Sentenced to Life Without Parole as Children](#), Feb. 20, 2020.
- 18 [Kimberly M. Foxx](#). November 20, 2019.



For more information about the ACLU of Michigan Campaign for Smart Justice, visit aclumich.org.

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