

The Myth of Race Neutrality in Criminal Legal Reform: Problems and Solutions

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Agenda

1. ACLU and the Smart Justice Campaign
2. The road from enslavement to mass incarceration
3. “Race neutral” is never race neutral
 - a. *Case study: pretrial risk assessments*
4. What you can do to intervene in mass incarceration
5. Q&A

Objectives

You will leave:

- Able to spot mediocre -- or actively harmful -- bail reforms
- Understanding that race neutrality doesn't exist; reforms must be explicitly race-conscious
- Knowing how to take action for bail reform and sentencing reform
- **Skeptical but not cynical:** trusting that change is possible

American Civil Liberties Union (ACLU) of Ohio

- National ACLU + state affiliates
- Legal, policy/advocacy, organizing, communications
- Criminal justice, policing, LGBTQ rights, voting rights





- National, multiyear effort to reduce the U.S. jail and prison population by 50% and to combat racism in the criminal legal system.
- Ohio's Smart Justice Campaign:
 - Bail reform www.OHBailReform.com
 - Sentencing reform

From enslavement to mass incarceration

- Yet another form of racial and class control
- Enslavement → convict leasing → Jim Crow → “War on Drugs” → mass incarceration → e-carceration
- Michelle Alexander: More Black men under correctional control today than were enslaved in 1850
- History of policing: to control the enslaved African population in Charleston, South Carolina

Opinion

The Newest Jim Crow

Recent criminal justice reforms contain the seeds of a frightening system of “e-carceration.”



By **Michelle Alexander**

Opinion Columnist

Nov. 8, 2018



The Problems with “Objective” Risk Assessments

CREATION AND VALIDATION OF THE OHIO RISK ASSESSMENT SYSTEM

Algorithms Should’ve Made Courts More Fair. What Went Wrong?

A 2011 Kentucky law requires judges to consult an algorithm when deciding whether defendants must post cash bail. More whites were allowed to go home, but not blacks.

The New York Times

The Risks and Rewards of Risk Assessment

Phillip Knox, Principal Consultant of KSA Consulting, LLC
Peter Keifer, Civil Court Administrator, Maricopa Superior Court, Arizona

Opinion

The Problems With Risk Assessment Tools

Opinion

Column: Don’t let a computer algorithm determine your freedom

Can Racist Algorithms Be Fixed?

COMMENTARY

Debating Risk-Assessment Tools

HARVARD LAW REVIEW

RACE AND THE LAW

Bail Reform and Risk Assessment: The Cautionary Tale of Federal Sentencing

Change is possible: a political and cultural transformation

- **Policy change**

- Pretrial detention= mass incarceration
- *War on Drugs* considered a widespread policy failure
- Beginning to adopt disease based model to treat addiction
- State and federal support for trauma informed care in health and social service sectors for communities destabilized by mass incarceration

- **Cultural shifts**

- Diverse representation in media and elevation of black narratives
- Acknowledging the legacy of slavery on modern institutions
- Greater understanding of white privilege and racial equity

- **Civic engagement**

- Ignited electorate
- Rise of social media activism and refined advocacy tactics
- Widespread bipartisan support

Smart Justice: Sentencing Reform

Statewide legislation:



SB 3 is a drug sentencing reform bill. It's goal is to help people struggling with drug use.

SB 3 would: Reclassify some charges from felonies to misdemeanors, prioritize treatment over jail time, increase amount of drugs one must possess before being charged with "aggravated trafficking."

Smart Justice: Sentencing Reform

Statewide legislation:



HB 1 expands the use of treatment rather than conviction for people struggling with drug or alcohol addiction.

HB 1 would: require court to hold a hearing to consider if someone needs treatment instead of a conviction, work to seal old records of nonviolent crimes.

Uplifting Voices

1. Practice active listening and learning

- Remember, the act of telling a story is healing in itself
- Stories make the invisible, visible

2. Center impacted people

- Cultivate leadership from within
- Emphasize skill building
- Build communities able to trust and empower one another

3. Putting your audience in the front row

- Don't try to romanticize history or over generalize

4. Obtain consent

- ★ Ongoing process

Take action today

➤ www.OHBailReform.org

Learn more about the bail system and join our advocacy/organizing.

➤ www.acluohio.org/action

Contact legislators on sentencing reform bills

What should bail reform look like?

-All individuals must have individualized hearings within 48 hours of detention

-Broad presumption of release

-There needs to be a ladder of possible conditions of release, and judges should only be allowed to set the minimum conditions necessary

-NO RISK ASSESSMENTS

-Presumption AGAINST monetary conditions of bail. If set, should only occur due to threat of flight and after an ability to pay determination

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or on the clipboard

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