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A NEW PARADIGM FOR PUBLIC SAFETY RESTORATIVE JUSTICE RACIAL JUSTICE ACT TRAINING

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INTRODUCTION

- Talking about race in mixed racial settings is uncomfortable.
- There is a cost to all groups for ignoring race.
- Intellect, talent & skill are not determined by race; it is not a human biological distinction.
 - Dominant group members are advantaged when they may not deserve it.
 - Subjugated group members are excluded who may be best qualified.
 - Result: the potential of entire population is not maximized at time when it is needed the most. *Caste*, by Isabel Wilkerson
- False racial dichotomy is unnecessarily reductive.

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THE CARCERAL STATE GREW OUT OF CHATTEL SLAVERY.

- Punishment of blacks initially based on enforcing slavery.
- First Africans brought to America in 1619.
- Last enslaved people freed in 1865. (246 years later).
- Modern policing grew directly out of **slave patrols**
Louisiana slave patrol statute of 1835: slave patrols were to "arrest any slave or slaves whether with or without a permit"
- Slavery was never fully abolished in the US
 - 13th Amendment states that: "neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States

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CRIMINALIZATION OF BLACKNESS

- After the 13th Amendment, **black codes** (replacing slave codes) criminalized almost every form of African American freedom: mobility, political power, and economic power.
 - Black people were denied equal political rights, including the right to vote, the right to attend public schools, equal housing, and the basic right to equal treatment under the law.
 - **Slave codes:** Restrictions included prohibiting enslaved people from voting (although North Carolina had allowed this before 1831), bearing arms, gathering in groups for worship, and *learning to read and write*. The purpose of these laws was to preserve subjugation in slave societies.

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CONVICT LEASING

Bolstered the South's faltering economy by providing employers "with a supply of cheap labor." Eric Foner, Historian

At least 90 percent of those forced into convict leasing were Black.

The practice incentivized baseless arrests and convictions of black citizens.

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"ARGUABLY THE MOST IMPORTANT PARALLEL BETWEEN MASS INCARCERATION AND JIM CROW IS THAT BOTH HAVE SERVED TO DEFINE THE MEANING AND SIGNIFICANCE OF RACE IN AMERICA. INDEED, A PRIMARY FUNCTION OF ANY RACIAL CASTE SYSTEM IS TO DEFINE THE MEANING OF RACE IN ITS TIME. SLAVERY DEFINED WHAT IT MEANT TO BE BLACK (A SLAVE), AND JIM CROW DEFINED WHAT IT MEANT TO BE BLACK (A SECOND-CLASS CITIZEN). TODAY MASS INCARCERATION DEFINES THE MEANING OF BLACKNESS IN AMERICA: BLACK PEOPLE, ESPECIALLY BLACK MEN, ARE CRIMINALS. THAT IS WHAT IT MEANS TO BE BLACK."

MICHELLE ALEXANDER, THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS

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DANIELLE SERED, UNTIL WE RECKON

“At the heart of that narrative is the story of an imagined monster who is not quite human like the rest of us, who is capable of extraordinary harm and incapable of empathy, who inflicts great pain, a monster we and our children have to be protected from at any price. This is not a new story. And it is not a race-neutral story. To the contrary: it has long been a story white people have told about black people.”

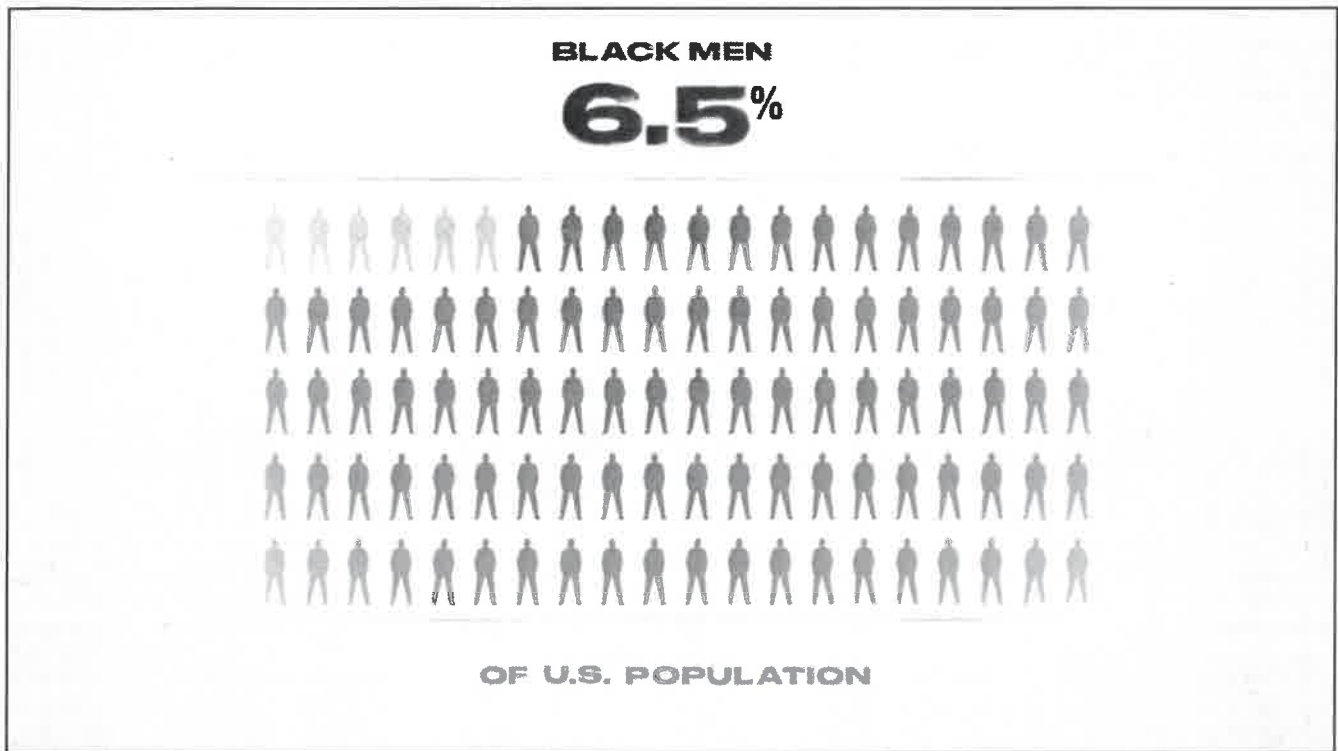
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THE MYTH OF BLACK MALE CRIMINALITY

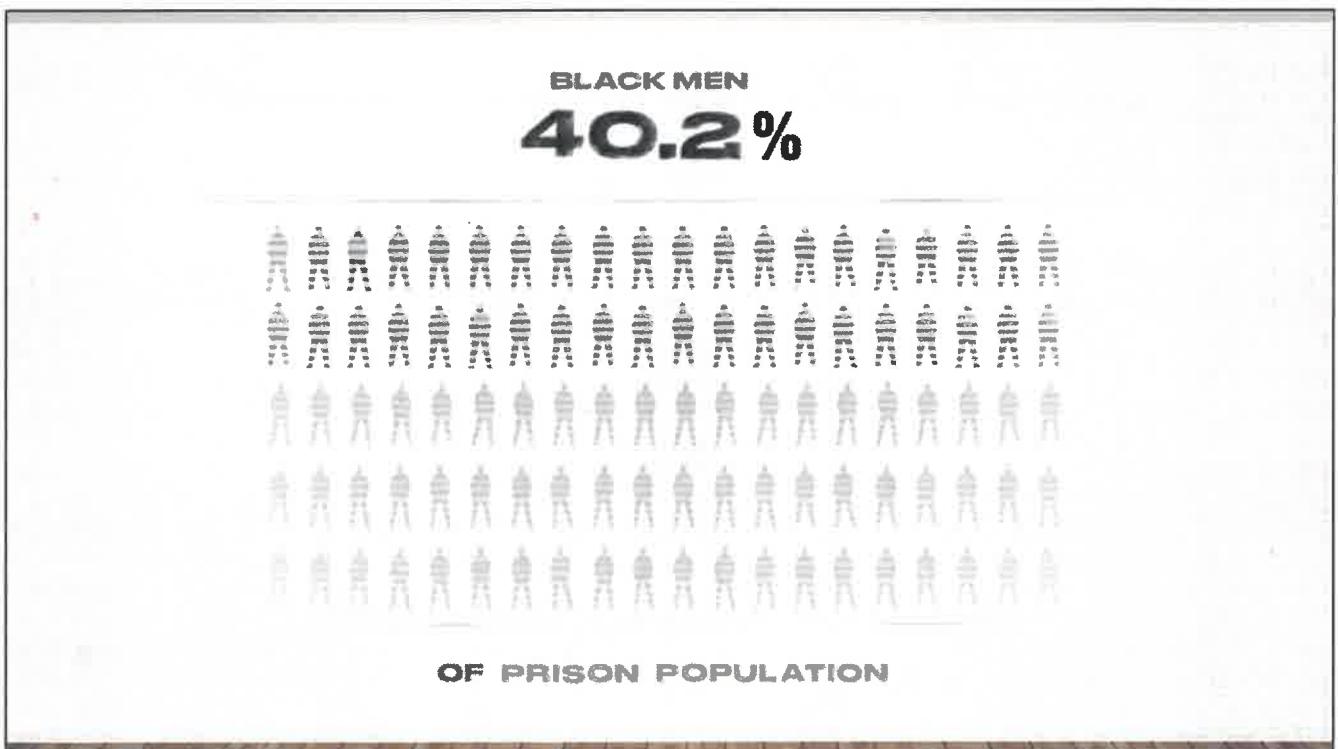
- Incarceration is supposed to keep us safe from danger:
 - Birth of a Nation (1915)
 - The “war on drugs” (1971)
 - Willie Horton (1988)
 - “Super-predators”/Central Park Five (1989)
- Americans can tolerate mass incarceration because it happens to “others” and is justified by this narrative.



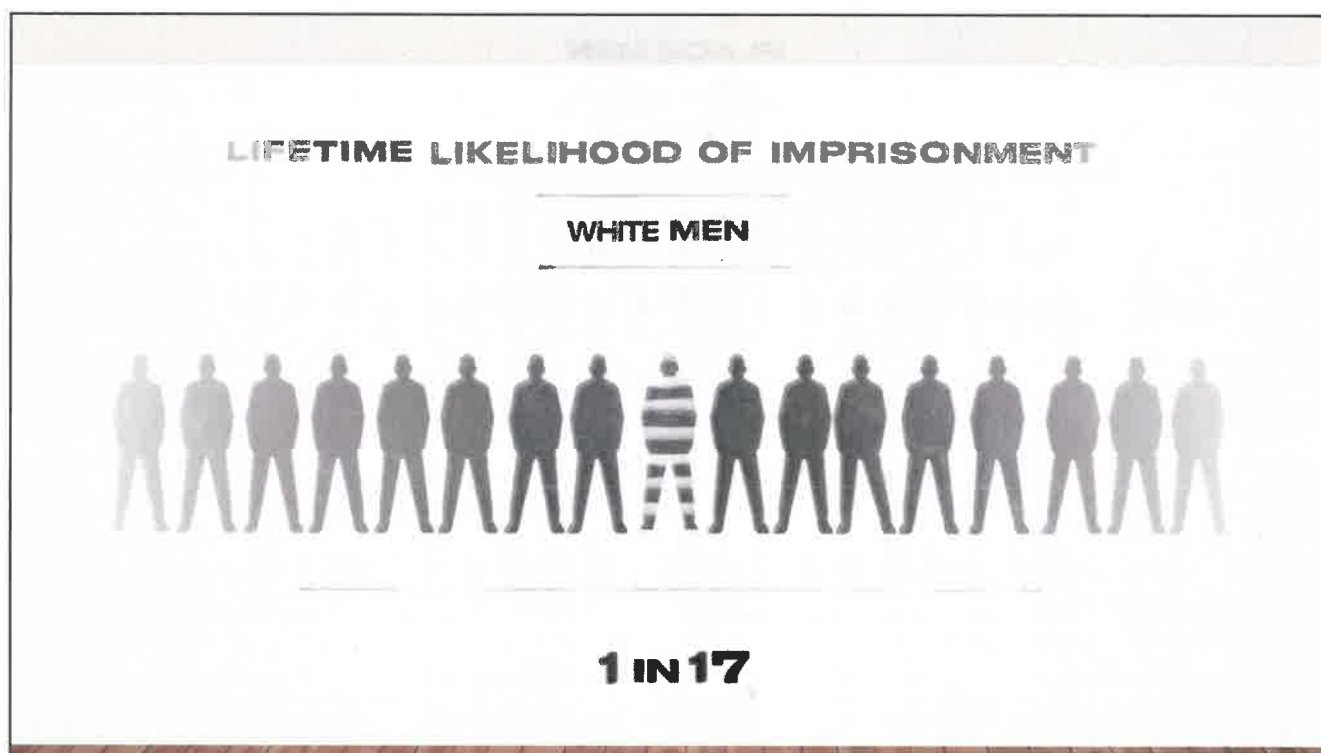
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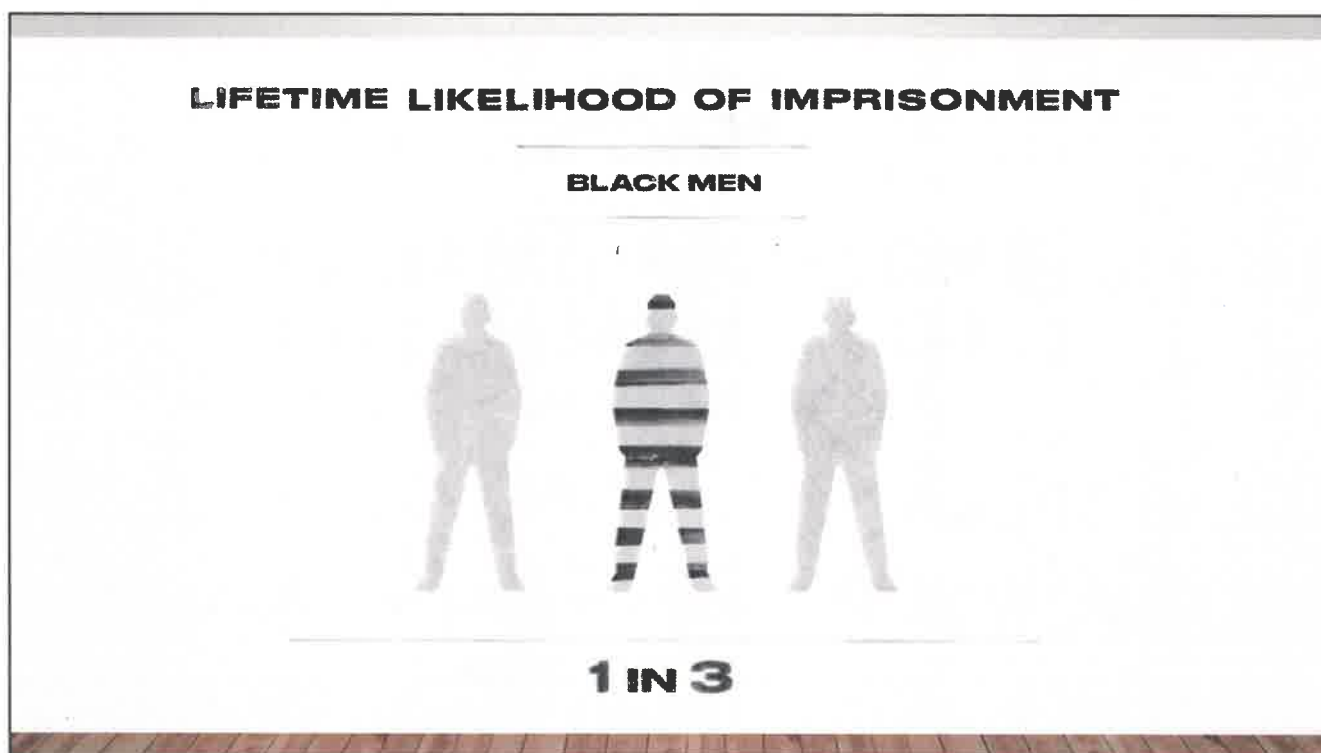
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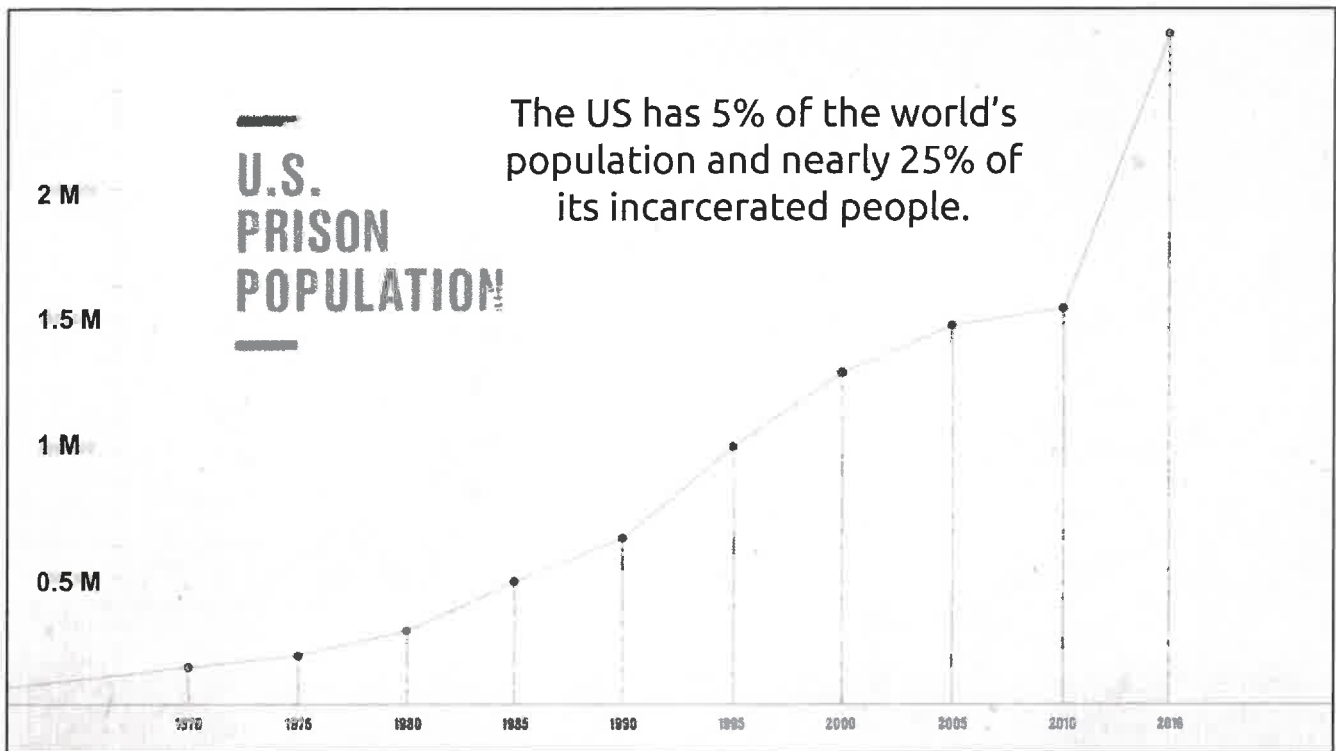
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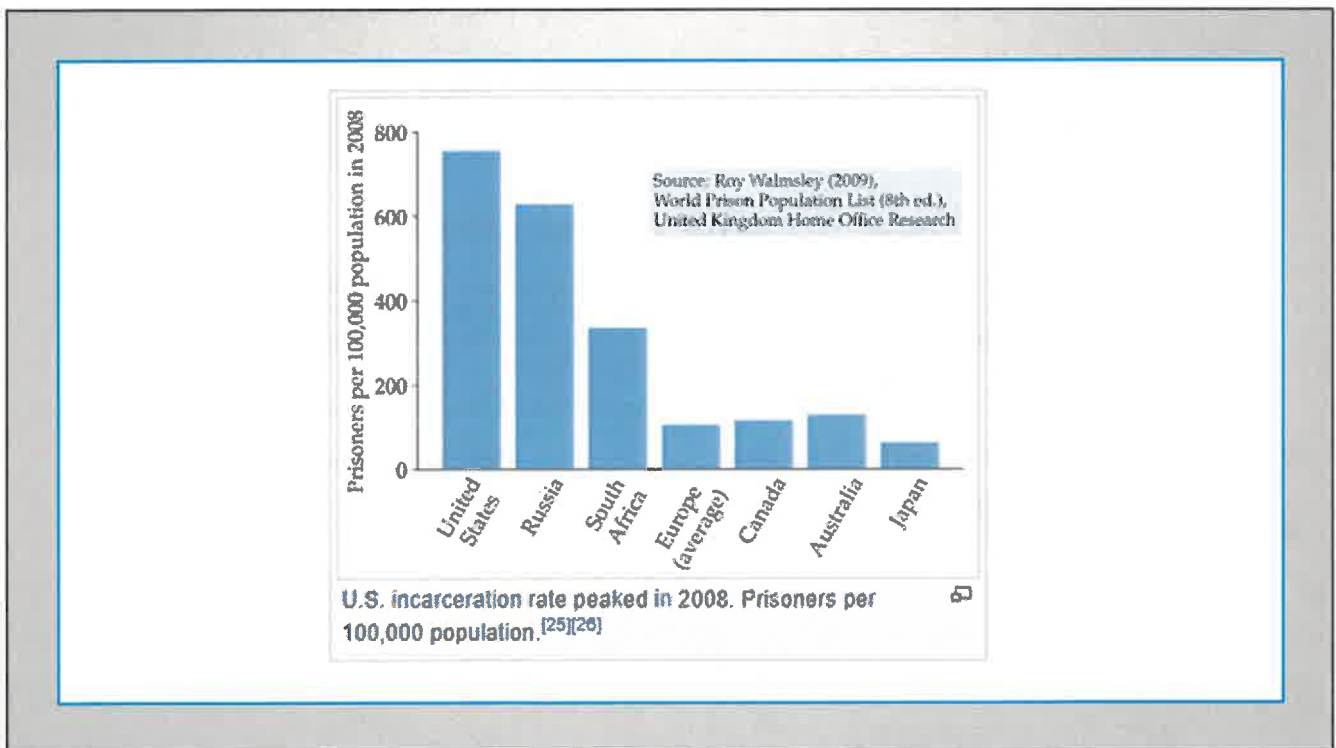
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KENOSHA SHERIFF IN 2018

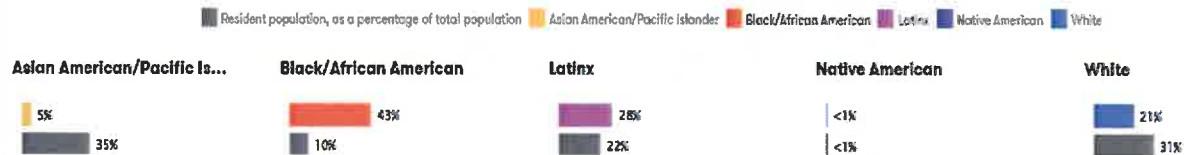
- "let's put them in jail. let's stop them...from...at least some of these males going out and getting ten other women pregnant and having small children. let's put them away. at some point, we have to stop being politically correct...if there is a threshold that they cross, these people have to be warehoused, no recreational time, in the jails. we put them away for the rest of their lives so that the rest of us can be better..."
- i have no issue with these five people completely disappearing. at [this] point, these people are no longer an asset to our community, and they just need to disappear."
- <https://www.facebook.com/114018/videos/10105411915275202>



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Racial Disparities in Incarceration

Black people are treated more harshly than white people at every stage of the criminal legal process. As a result, people of color—and Black people in particular—are incarcerated at strikingly higher rates than white people in jails and prisons across the country. The bar graphs below show the proportion of people in jail who are from each racial group against that group's share of the general resident population.



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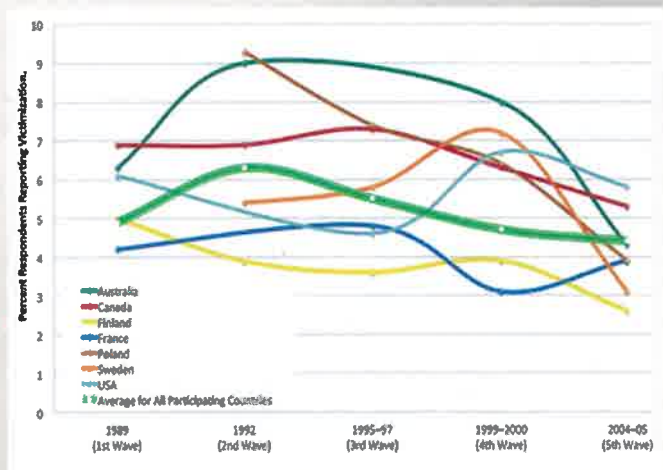
The [UCLA Special Circumstance Conviction Project](#) has collected comprehensive sentencing records from California county district attorney's offices, courts, and the California Department of Corrections and Rehabilitation and has tracked and analyzed historical trends in this data regarding the life without the possibility of parole sentence.

● After conducting a preliminary analysis of Alameda county data, the following findings make evident the need to evaluate the usage of the penal code overall:

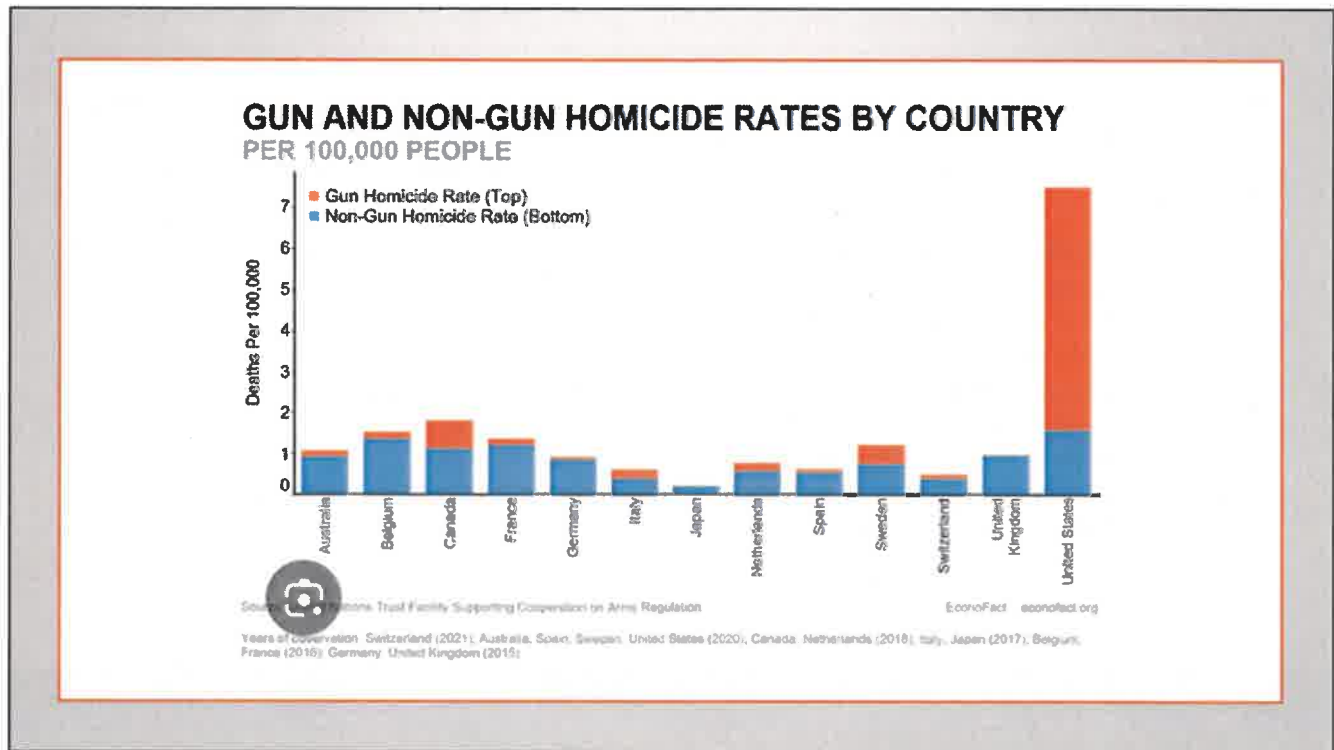
- - 70.7% of individuals sentenced to Life Without Parole (LWOP) from Alameda County are black.
- Black people make up only 9.9% of Alameda's population.
- Black individuals make up 34.7% of the entire LWOP population in California (slightly behind state average).
- - 7.33% of individuals sentenced to LWOP from Alameda County are white.
- White people account for 37.9% of the county's overall population.
- - 72.3% of individuals from Alameda were youth at the time of their offense (under the age of 26).
- - Of the individuals from Alameda who were under the age of 21 at the time of their offense, 82.35% are black.

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WHY CRIME RATES ARE FALLING THROUGHOUT WESTERN WORLD, BY MICHAEL TONRY, UNIV. OF CHICAGO PRESS JOURNALS, CRIME AND JUSTICE, VOL. 43, 2014 "DIVERSE EXPLANATIONS HAVE BEEN OFFERED FOR BOTH THE LONG- AND SHORT-TERM DECLINES. MOST AGREE THAT, WHATEVER THE EXPLANATIONS MAY BE, THEY DO NOT INCLUDE DIRECT EFFECTS OF CHANGES IN POLICING OR SANCTIONING POLICIES."



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CENTRAL DRIVERS OF VIOLENCE

The core national violence prevention strategy relies on a tool that has as its basis the central drivers of violence.

- **Poverty** drives violence
- **Lack of opportunity** drives violence.
- **Shame and isolation** drive violence.
- **Violence itself** drives violence.

“One thing is certain about the problem of violence: we will never solve it through incarceration.”

- Danielle Sered

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CENTRAL DRIVERS OF VIOLENCE ARE ALSO THE CORE FEATURES OF IMPRISONMENT

- On the individual level, violence is driven by:
 - **Shame**
 - *Incarceration is a shaming experience, from the loss of agency to the notion that incarcerated people are “bad” and must be separated from the general public*
 - **Isolation**
 - *Incarceration separates people from their communities physically and emotionally*
 - **Exposure to violence:**
 - *Incarcerated people are likely to endure violence, including sexual violence, experience enormous mental distress and endure serious lasting trauma*
 - **An inability to meet one's economic needs**
 - *Incarceration interrupts people's education, rendering many homeless upon return from prison; limits their prospects for employment and a living wage*

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STATE SANCTIONED VIOLENCE

- Slavery
 - Whipping people with leather straps studded with nails; hanging people by their wrists for days while repeatedly beating them unconscious; raping people with wooden poles and broken glass; castrating men; cutting off people's fingers or hands; burning people to the brink of death and then reviving them only to hurt them further; and more.
 - Promised the same to your children and their children. “all the versions of you that will ever be.” Dr. Anna Ortega-Williams (visionary social worker)
- Jim Crow
 - More than 4075 documented lynchings of African Americans took place between 1877 and 1950, concentrated in 12 Southern states.
- Law enforcement excessive force
 - In 2019 fatal shootings increased to 1,004. The [rate of fatal police shootings](#) among Black Americans was much higher than that for any other ethnicity.

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AMERICAN RECKONING

- A commitment to **accountability** for violence in a way that is more meaningful and effective than incarceration;
- Engage in an **honest reckoning** with the current and historic role race has played in the use of punishment in the US;
- Deconstruct the ideology of white supremacy, patriarchy, capitalism; and
- **Change the socioeconomic/structural conditions** that make violence/harm likely in the first place.

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RACIAL JUSTICE ACT

- AB 2542 would establish the California Racial Justice Act (Act) which would prohibit the state from seeking or obtaining a criminal conviction, or from imposing a sentence, based upon race, ethnicity or national origin.
- Specifically, the Act would make it possible for a person charged or convicted of a crime to challenge racial bias in their case, upon a prima facie showing, and through evidence of:
 - 1) Exhibited racial bias by an attorney, judge, law enforcement officer, expert witness, or juror involved in the case.
 - 2) Use of racially discriminatory language during the trial, whether or not purposeful or directed at a defendant.
 - 3) Racial bias in jury selection, such as removing all or nearly all people of color from the jury.
 - 4) Statistical disparities in charging and convictions – that is, evidence that people of one race are disproportionately charged or convicted of a specific crime or enhancement.
 - 5) Statistical disparities in sentencing – that is, evidence that people of one race receive longer or more severe sentences, including the death penalty or life without parole.

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ANTIOCH POLICE DEPT. RACIST TEXT MESSAGES

- The text messages continuously refer to Black people as "gorillas" and "monkeys," and officers repeatedly texted photos of gorillas to each other.
- A sergeant, Josh Evans, texted in reference to the arrest of a Black suspect, "I'll bury that N*&*er in my fields."
- Four minutes later he texted again. "And yes... it was a hard R on purpose."
- "I'm only stopping them cuz they black"
- <https://www.npr.org/2023/04/27/1171369375/california-police-scandal-racist-texts#:~:text=These%20California%20police%20officers%20have,They%20sent%20racist%20texts&text=Sandhya%20Dirks%20FNPR-,Kiora%20Hansen%20and%20Della%20Currie%20protest%20against%20racism%20by%20Antioch,the%20police%20department%20on%20Tuesday.>

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RE- ALLOCATION OF RESOURCES

- Policies that **DIVEST from social services** for communities of color and **INVEST in prison industrial complex** *nurture violence* in communities by exacerbating the very things that foster it:
 - Poverty/lack of employment opportunities
 - Instability
 - Substandard education
 - Inadequate housing/redlining
 - Lack of affordable/free healthcare
- The only other industry with more public investment than law enforcement/prisons is the military.

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RESTORATIVE JUSTICE APPROACH

To secure the safety of survivors and communities, we will need to implement interventions that can transform the behavior of people who have caused harm.

Responses to violence should be:

- Survivor-centered (making space for victims of color)
- Accountability-based (centering healing for victims & community)
- Safety-driven (does not perpetuate violence/harm)
- Racially equitable (contextualized & reparative)

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RESTORATIVE JUSTICE

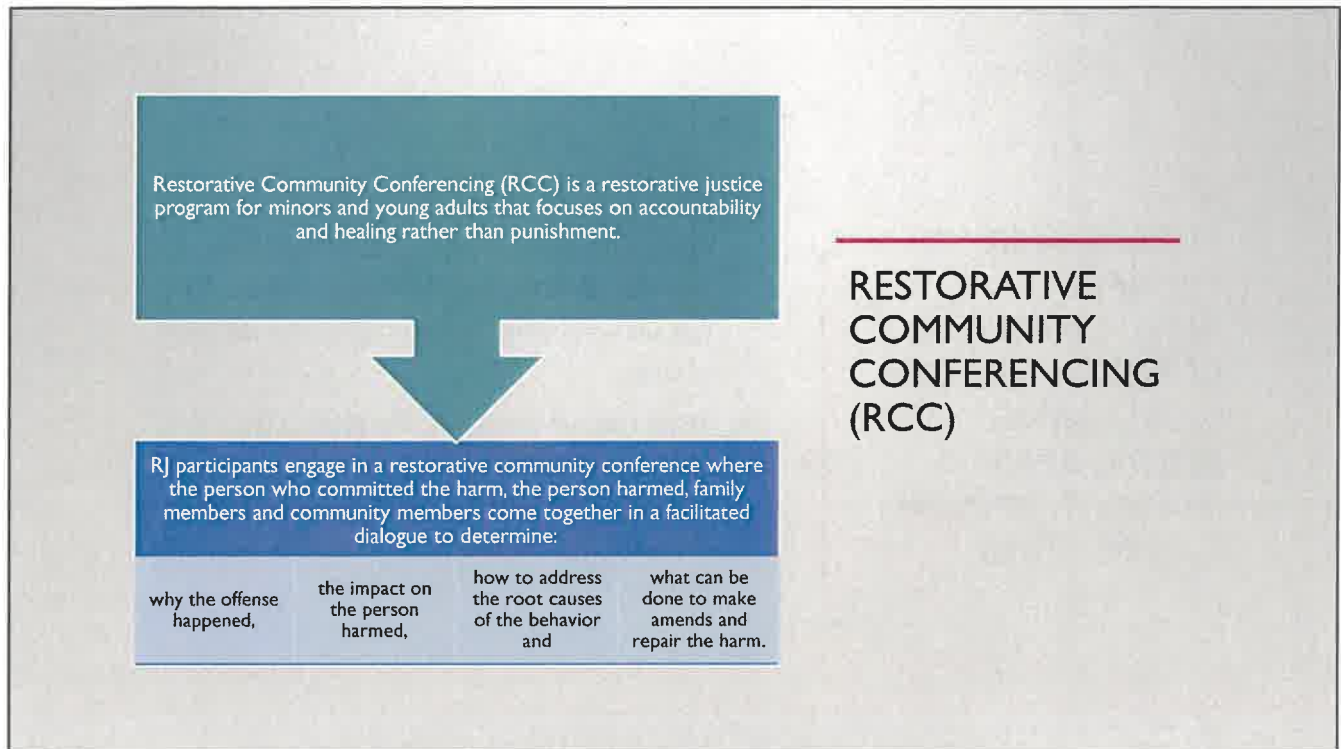
Retributive Justice	Restorative Justice
<ul style="list-style-type: none"> • What rule/law was broken? • Who is to blame? • What punishment is deserved? 	<ul style="list-style-type: none"> • What harm was done? • What are the needs of those involved? • How can harm be repaired?

Restorative Justice also asks:

- Who has a stake in this situation?
- What are the causes?
- What is the appropriate process to involve stakeholders in an effort to make things right and address underlying causes?



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THE PROMISE AND CHALLENGE OF RESTORATIVE JUSTICE FOR VICTIMS

WE ARE WORKING TOWARD APPROPRIATE VICTIM INVOLVEMENT IN RESTORATIVE JUSTICE PROGRAMS WHEN THE FOLLOWING CONDITIONS ARE MET:

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**VICTIMS AND
VICTIM
ADVOCATES ARE
REPRESENTED ON
GOVERNING
BODIES AND
INITIAL PLANNING
COMMITTEES.**

- Victims and their advocates are unusually suited to offer the subtleties of program design that ensure safe and welcoming messages to injured survivors of crime.
- When they are included in the process of developing and managing programs, their presence highlights the programs commitment to crime victims and the sensitivities that need to be addressed so as not to revictimize.

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**EFFORTS TO
INVOLVE
VICTIMS GROW
OUT OF A
DESIRE TO
ASSIST THEM,
NOT
OFFENDERS.**

- Victims are not responsible to rehabilitate or assist offenders unless they chose to do so.
- The concern for offenders is important, but we must be careful never to use victims primarily as a way to deal with offenders. That should not be the reason for victim involvement in justice.

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VICTIM'S SAFETY IS A FUNDAMENTAL ELEMENT OF PROGRAM DESIGN.

- Whether working with crime victims in the immediate aftermath of an incident, or years later, all interventions must first and foremost recognize the victim's safety and security needs, both physical and emotional, as articulated by them.
- Victims must be free to express their natural human responses to the crime, including anger, rage, and need for vengeance without judgment and with understanding of their pain.

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VICTIMS SHOULD CLEARLY UNDERSTAND THEIR ROLES IN THE PROGRAM, INCLUDING POTENTIAL RISKS AND BENEFITS.

- Victims must be prepared for participating in the program by giving them as much information as possible about their role in the process, what to expect and the known risks and benefits to themselves and to offenders.
- Victims should be informed of any benefits to the offender through the program.

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CONFIDENTIALITY IS PROVIDED WITHIN CLEAR GUIDELINES.

- A victim's right to privacy must always be protected.
- Victims should choose when, what, and how information is disclosed about them and their experience.
- They should also be informed of any rules and regulations regarding confidentiality under which the program operates.

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VICTIMS ARE GIVEN AS MUCH INFORMATION AS POSSIBLE ABOUT THEIR CASE, THE OFFENSE AND THE OFFENDER.

- Victims may or may not choose to engage in face-to-face dialogue with the offender; or there may be other reasons why it is inappropriate or impractical for the victim and offender to meet.
- Still victims usually want information about the offender, and that can and should be addressed.

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VICTIMS CAN IDENTIFY AND ARTICULATE THEIR NEEDS AND SHOULD BE GIVEN CHOICES.

- The opportunity to identify their own needs and make choices about how they are addressed can help to re-empower victims.
- Victims should be the gatekeepers as to whether and when a direct encounter with their offender takes place.

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VICTIMS' OPPORTUNITIES FOR INVOLVEMENT SHOULD BE MAXIMIZED

- Since a core element of victim trauma is disempowerment, Restorative Justice programs should provide as many opportunities as possible for victims to be involved in their cases, as well as the program as a whole.

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PROGRAM DESIGN PROVIDES REFERRALS FOR ADDITIONAL SUPPORT AND ASSISTANCE.

- Crime victims may have additional needs that cannot be met by the program.
- Programs ought to be familiar with additional community services for victims and routinely make those referrals.
- Wrap around services for victims is ideal.

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SERVICES SHOULD BE AVAILABLE FOR VICTIMS EVEN WHEN THEIR OFFENDER HAS NOT BEEN ARRESTED OR ARE UNWILLING OR UNABLE TO PARTICIPATE.

- If victims are central to the process of justice, and their needs are the starting point, then as a justice system we cannot simply offer services only when an offender is identified and/or arrested.
- To the extent possible, we must provide services and options for victims even when the offender is not known.

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