

## **JAIL CONFINEMENT AND RACIAL DISPARITY (DRAFT April 4, 2017)**

### **Priority Step: Limit and Avoid the Imposition of Financial-Release Conditions**

#### Significant Racial Disparity in Champaign County's Jail Population

A study of Champaign County's criminal-justice system completed in 2013 by the Institute for Law and Policy Planning (ILPP) found significant racial disparity in the county's jail population. A profile analysis, which is a "snapshot" of the jail population on a specified day, revealed that 64% of the people confined in the jail were black.<sup>1</sup> Another way of examining a jail's population, known as a tracking analysis, found that 57% of the people released from the jail during a one-year period ending in December 2012 were black.<sup>2</sup> This racial disparity in the jail population persists today. For example, on December 5, 2016, 71% of the people confined in the jail were African Americans.<sup>3</sup> By contrast, 13% of Champaign County's population is black.<sup>4</sup>

#### Disparate Impact of Financial-Release Conditions on African Americans

The majority of the people in the Champaign County jail have not been convicted of the crime for which they were arrested.<sup>5</sup> They are simply awaiting the outcome of such decisions as whether a criminal charge will be filed or dismissed or how their case will otherwise be resolved. ILPP reported that the racial disparity in such pretrial confinement is even greater – 12% higher – than the substantial racial disparity in the county's overall jail population.<sup>6</sup>

"D-bonds" are the primary means of securing pretrial release from jail in Champaign County.<sup>7</sup> D-bonds require a person to pay 10% of the bail amount set by a judge in order to be freed from jail.<sup>8</sup> Thus, if a judge sets bail at \$20,000, a person must pay \$2,000 for his/her freedom during the processing of the criminal case.

Champaign County does not yet collect or report data, broken down by race, on the number and percent of people confined in the county jail due to their inability to post bond of varying amounts. But it is evident from research in other jurisdictions that cash bail leads to people being incarcerated pretrial simply because they lack the financial resources to post bail. For example, in 2013, more than half of those incarcerated pretrial in New York City's jails could not afford to pay \$2500 or less in bail, and 30% of those arrested for felonies and 46% of those arrested for crimes that were not felonies were unable to pay bail as low as \$500 or less.<sup>9</sup>

Champaign County also does not collect and report data on the income levels of persons incarcerated in the jail or break down these statistics by race. But the ILPP report did find that a majority of people in the profile sample and close to half in the tracking sample were unemployed.<sup>10</sup> Compared to the overall jail population, more pretrial detainees were unemployed (+10%) and black (+12%).<sup>11</sup> The ILPP study also reported that the majority of the people confined in the jail had neither a high-school degree nor a GED.<sup>12</sup> Both unemployment and limited education are highly correlated with low income and poverty.<sup>13</sup> It can therefore safely be said that the people incarcerated in the county jail are not only disproportionately African Americans but typically people with low, if any, incomes before their arrest.

African Americans in this country are disproportionately unemployed, working in jobs paying only the minimum wage, and living below the poverty line.<sup>14</sup> Because of this correlation between lack of wealth and race, the adverse impact of financial-release conditions, including unnecessary pretrial incarceration, falls most heavily on African Americans, whether in this county or elsewhere.

### Recommendations

The Racial Justice Task Force therefore recommends the taking of the following steps to begin reducing the racial disparity in the county's jail population:

#### **1. Adopt and implement a court order to expand the issuance of notices to appear at the jail by the Champaign County Sheriff and the staff under his command.**

The Illinois Supreme Court has devised bail schedules for some crimes.<sup>15</sup> People arrested for these crimes can avoid pretrial detention simply by paying the sum listed in the bail schedule at the jail. On June 28, 2016, Judge Thomas Difanis, Presiding Judge of the Champaign County's Circuit Court, commendably issued County Administrative Order 2016-02. This order authorizes the Sheriff and the officers whom he oversees to issue notices to appear in court to persons arrested for theft, retail theft, and criminal trespass to land. The issuance of these notices to appear by the jail officials obviates the need for persons arrested for certain crimes to have the amount of money set forth in a bail schedule in order to avoid pretrial confinement in the jail.

The Racial Justice Task Force recommends the issuance of a court order, and its implementation by the Sheriff, to increase and maximize, in conformance with the law and public-safety needs, the issuance of notices to appear to arrested individuals brought to the jail. A mechanism should also be put in place to monitor, evaluate, and publicly disseminate findings on the implementation of this order to determine whether any additional refinements to the order are needed. The Task Force furthermore recommends that a working group, appointed by Chief Judge Difanis, develop recommendations, for the court's consideration, regarding the terms of this order and the mechanism for monitoring, evaluating, and disseminating information regarding its implementation. Possible members of this working group might include Chief Judge Difanis or his designee, a judge who presides over bond court, an attorney with criminal-justice expertise recommended by the Champaign County Bar Association or the Champaign County Criminal Defense Lawyers' Association, a professor from the U. of I. Law School who has criminal-justice expertise, and the Sheriff. Courts commonly appoint such working groups to aid them in identifying steps to be taken to improve a criminal-justice system.<sup>16</sup>

#### **2. Utilize validated risk-assessment instruments and well-trained pretrial-services officers to limit the imposition of financial-release conditions as much as the law currently allows.**

Illinois law discourages the imposition of money bail, stating that it should be required "only when it is determined that no other conditions of release will reasonably assure the defendant's appearance in court, that the defendant does not present a danger to any person or the community and that the defendant will comply with all conditions of bond."<sup>17</sup> If two

evidence-based practices – validated risk-assessment instruments and pretrial services – were instituted in this county, it is unlikely – many would say impossible – that a court could conclude that only money bail could provide the reasonable assurance that a person will appear in court when required and not physically harm others while the criminal case is pending.

*Validated Risk-Assessment Instruments.* Validated risk-assessment instruments are now being used successfully across the country to aid judges in identifying when a person poses such a high risk of failing to appear in court or of endangering others while a criminal case is being processed that his or her confinement pretrial is necessary.<sup>18</sup> These instruments also provide empirically grounded guidance to judges regarding the pretrial-release conditions, if any, a person should be subject to.<sup>19</sup> Thus, through risk assessment, unnecessary pretrial incarceration and the imposition of unneeded pretrial-release conditions can be averted, both of which have been linked to higher recidivism rates.<sup>20</sup> What particularly bears highlighting here, though, is that by instituting evidence-based practices to inform release decisions and diminishing reliance on, and utilization of, financial-release conditions in this county, the disparate effects of financial-release conditions on the economically disadvantaged, a disproportionate number of whom are African American, can be curbed. Who is and is not subject to pretrial confinement in Champaign County will then be based on objective assessments of risk, not on subjective judgments, the potential infiltration of implicit bias, and a person's wealth.

*Pretrial Services.* In a well-structured criminal-justice system that follows evidence-based practices, pretrial-services officers take steps to facilitate compliance with release conditions. For example, to help avoid the failures to appear in court that trigger, as is occurring in this county,<sup>21</sup> the issuance of arrest warrants and pretrial confinement, pretrial-services officers send reminders, via text messages or other means, of impending court dates.<sup>22</sup> In 2013, the Champaign County Community Justice Task Force recommended that a comprehensive pretrial-services program, including validated risk assessment, be implemented in the county.<sup>23</sup> This recommendation stemmed from pretrial services' linkage to reduced recidivism and incarceration in jail. The Racial Justice Task Force renews this recommendation for an additional reason – to help reduce racial disparity in the jail's population by moving the county away from a money-based pretrial-release system.

### **3. Ensure that the validated risk-assessment instrument used in Champaign County is as race-neutral as possible and readily accessible to the public.**

Risk-assessment instruments have now been developed to further limit racial disparity in pretrial-release and detention decisions. These instruments do not, for example, consider in the risk assessment employment, education level, marital status, or whether a person owns or rents a home, factors that can lead to the disproportionate confinement of African Americans and are not needed for a risk assessment to be valid.<sup>24</sup> The Racial Justice Task Force therefore recommends that the validated risk-assessment instrument adopted in Champaign County to inform pretrial-release and detention decisions and limit racial disparity be as race-neutral as possible. The Task Force further recommends that this risk-assessment tool be readily accessible to the public. This step will help bring transparency into the pretrial-release decision-making process in Champaign County.

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<sup>1</sup> Institute for Law and Policy Planning. (2013, App. p. 12). *Champaign County Criminal Justice System Assessment: Final Report* [ILPP Report]. Berkeley, CA: ILPP. Retrieved from <http://www.urbanainllinois.us/sites/default/files/attachments/02-champaign-county-criminal-justice-system-assessment.pdf>.

<sup>2</sup> Id. at App. p. 6.

<sup>3</sup> This statistic is drawn from a web-based tool created by Dr. Bev Wilson and students in his Civic Technology course at the University of Illinois at Urbana-Champaign. The *Race and Criminal Justice in Champaign County: Visualization Tools* can be accessed at <https://up494.shinyapps.io/VizTools>.

<sup>4</sup> U.S. Census Bureau. (2015). *QuickFacts: Champaign County, Illinois*. Retrieved March 29, 2017, from <http://www.census.gov/quickfacts/table/RHI305210/17019#headnote-js-a>.

<sup>5</sup> At the time of the ILPP study, 56% of the people confined in the jail were pretrial detainees. ILPP Report. (2013, App. p. 15). On March 28, 2017, 93% of the incarcerated people were listed as “unsentenced.” Champaign County Sheriff’s Office. (2017, March 28). *Division of Corrections Daily Report*. This figure, though, includes others in addition to pretrial detainees, such as individuals who have been convicted and are awaiting the imposition of their sentences.

<sup>6</sup> Id. at App. p. 19.

<sup>7</sup> The ILPP report listed the reason for the release of people from the jail during a one-year period. Forty-seven per cent posted bond, and 18% were released on recognizance (ROR). Id. at App. p. 9. ROR, also known as “Individual bond” or “I-bond”, does not require a monetary deposit to be paid upfront as a condition of release. Ill. S. Ct. R. 553(d). About a third of the jail’s population was released for other reasons, such as because they had completed serving a jail sentence. ILPP Report (2013, App. p. 9).

<sup>8</sup> 725 Ill. Comp. Stat. § 110-7(1).

<sup>9</sup> New York City Criminal Justice Agency. (2013). *Annual Report 2013* New York, NY: New York City Criminal Justice Agency.

<sup>10</sup> Fifty-six percent of those in the profile sample and 48% in the tracking sample were unemployed. ILPP Report. (2013, App. pp. 6, 12).

<sup>11</sup> Id. at App. p. 19.

<sup>12</sup> Fifty-seven percent of the profile sample and 51% of the tracking sample had no high-school degree or GED. Id. at App. pp. 6, 12.

<sup>13</sup> Proctor, B., Semega, J. & Kollar, M., U.S. Census Bureau, Economics and Statistics Administration (2016). *Income and Poverty in the United States: 2015*. Washington, D.C.: U.S. Government Printing Office.

<sup>14</sup> Plumer, B. (2013, August 28). *These ten charts show the black-white economic gap hasn’t budged in 50 years*. Retrieved from

[https://www.washingtonpost.com/news/wonk/wp/2013/08/28/these-seven-charts-show-the-black-white-economic-gap-hasnt-budged-in-50-years/?utm\\_term=.3aeef4314155](https://www.washingtonpost.com/news/wonk/wp/2013/08/28/these-seven-charts-show-the-black-white-economic-gap-hasnt-budged-in-50-years/?utm_term=.3aeef4314155). The U.S. Census Bureau estimated that in 2015, 41.5% of African Americans in Champaign County were living below the poverty level, compared to 17.2% of white people. U.S. Census Bureau. Poverty Status in the Past 12 Months: 2011-2015 American Community Survey 5-Year Estimates. Retrieved March 29, 2017, from [https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS\\_15\\_5YR\\_S1701&prodType=table](https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_15_5YR_S1701&prodType=table).

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15 See, e.g., Ill. S. Ct. R. 528.

16 See, e.g., Municipal Division Work Group. (2016). *Report of the Municipal Division Work Group to the Supreme Court of Missouri*. Retrieved from <https://www.courts.mo.gov/file.jsp?id=98093>

17 725 Ill. Comp. Stat. § 110-2.

18 Pretrial Justice Institute. (2015, pp. 4-5). *Pretrial Risk Assessment: Science Provides Guidance on Assessing Defendants* [PJI Report]. Washington, D.C.: PJI. See also Danner, M., VanNostrand, M., & Spruance, L. (2015, pp. 10-12). *Risk-Based Pretrial Release Recommendation and Supervision Guidelines*. St. Petersburg, FL: Luminosity, Inc. (reporting that Virginia Pretrial Risk Assessment Instrument (VPRAI) reliably predicts pretrial risk or failure).

19 Id. at 2.

20 Lowenkamp, C., VanNostrand, M., & Holsinger, A. (2013, p. 4). *The Hidden Costs of Pretrial Detention*. Houston: TX: Laura and John Arnold Foundation; PJI Report (2015, p. 2).

21 For example, according to data hand-tabulated by a member of the Racial Justice Task Force, on February 14, 2017, 27 of the people confined pretrial for more than 48 hours on bond of \$25,000 or less had been ordered confined following their failure to appear in court.

22 Pretrial-services officers take additional steps that curb failures to appear in court. For example, their monitoring of compliance with nonfinancial conditions of release significantly reduces the FTA (failure to appear in court) rate of moderate-risk and certain higher-risk individuals who remain in the community while their criminal cases are being processed. Lowenkamp, C. & VanNostrand, M. (2013, pp. 13-14). *Exploring the Impact of Supervision on Pretrial Outcomes*. Houston: TX: Laura and John Arnold Foundation

23 Champaign County Community Justice Task Force. (2013). *Recommendations*. Urbana, IL: Champaign County Board. Retrieved from <http://www.urbanaininois.us/sites/default/files/attachments/03-recommendations-champaign-county-community-justice-task-force.pdf>.

24 One such risk-assessment instrument, called the Public Safety Assessment-Court tool (PSA), has been developed by the Laura and John Arnold Foundation and implemented in thirty cities and states. Laura and John Arnold Foundation. (2016, August 8). *New data: Pretrial risk assessment tool works to reduce crime, increase court appearances*. Retrieved from <http://www.arnoldfoundation.org/new-data-pretrial-risk-assessment-tool-works-reduce-crime-increase-court-appearances>. A piloting of the PSA in Lucas County, Ohio resulted in a doubling of the percentage of people released on recognizance, a significant drop (by half) in crimes committed while on release pretrial, and a large decline (49% to 29%) in the FTA rate. Id.

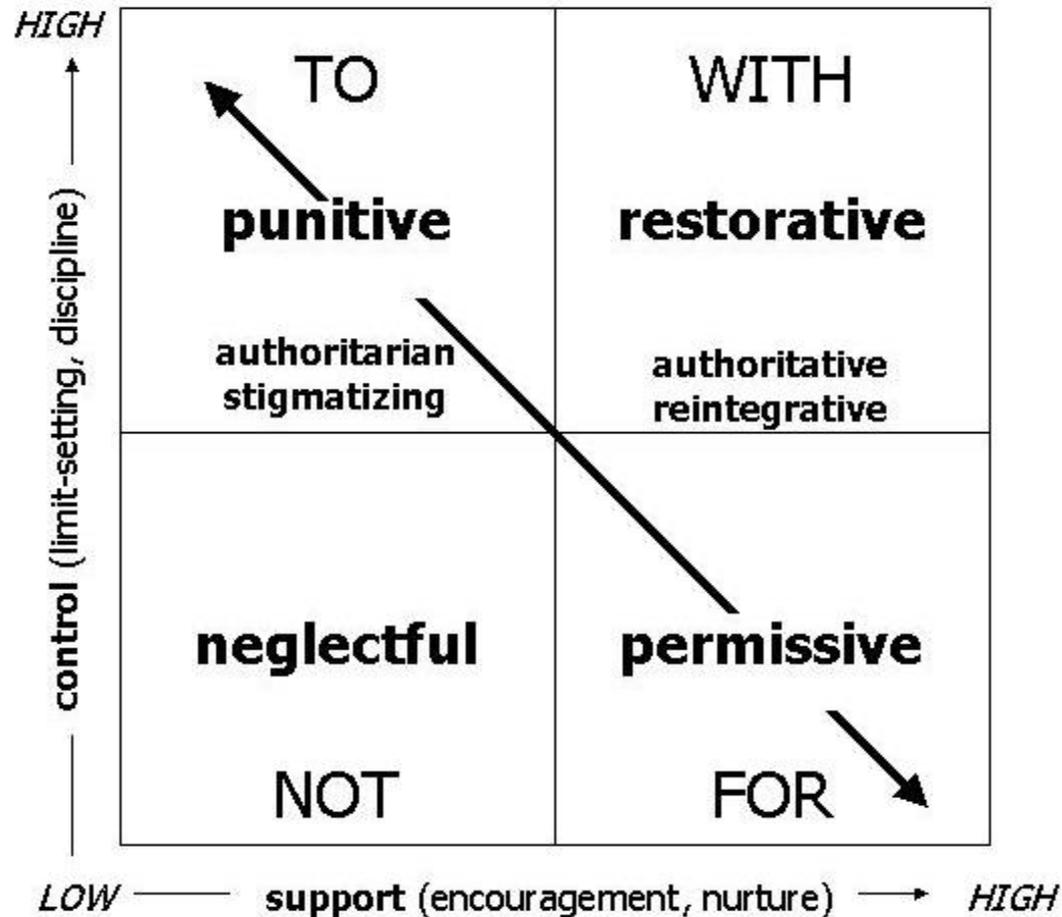
# Restorative Justice Overview

Racial Justice Task Force

April 13, 2017

Presented by Sara Balgoyen & Lynn  
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# Restorative Mindset Map



# What is Restorative Justice?

"Restorative justice represents a paradigm change from thinking about **justice** as a mechanism for **social control** to thinking about justice as a mechanism for **social engagement**.

We know that people who are engaged in healthy ways socially and emotionally make better decisions, and so restorative justice seeks to be socially and emotionally intelligent justice."

# Understanding Restorative Justice

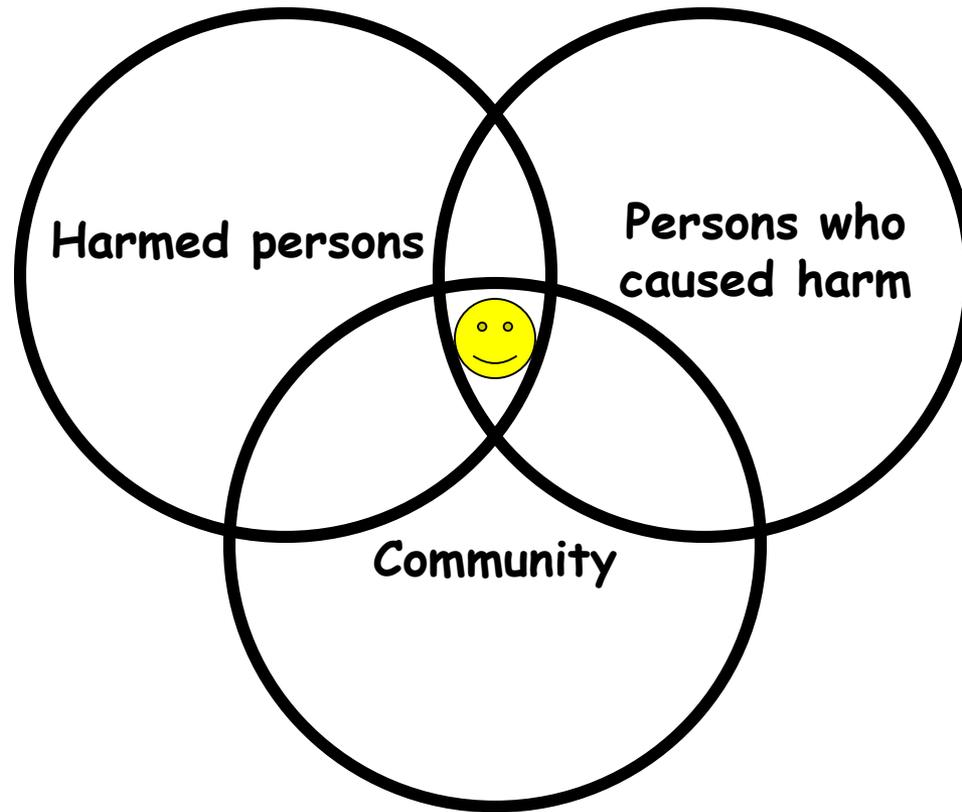
Instead of asking...

- What *rule/law* was broken?
- *Who* did it?
- How will we *punish* them?

Restorative justice asks...

- What *harm* was done?
- How can the harm be *repaired*?
- Who is *responsible*?

# Restorative Justice finds Common Ground when addressing Harms



# Four Important Elements

make it more likely that programs will reflect restorative principles

- **Encounter:** Creates opportunity for all to meet to discuss the crime and its harm to others.
- **Amends:** Expects those who've caused harm to take steps to repair the harm done to others.
- **Reintegration:** Seeks to restore both those who have been harmed and those who caused harm to whole, contributing members of society.
- **Inclusion:** Provides opportunities for all to collaborate in creating a resolution, including the community.

# IMPLEMENTATION OF RESTORATIVE JUSTICE AT ALL STAGES OF A CRIMINAL-JUSTICE SYSTEM

- Law-Enforcement Stage: Before prosecution referral
- Pre-Charge Stage: After prosecution referral; before criminal charge filed
- Post-Charge, Pre-Conviction Stage: After criminal charged filed; before conviction
- Post-Conviction, Presentencing Stage: After conviction; before sentence imposed
- While Serving a Sentence

# Restorative Justice and Restorative Practices

Restorative practices is a social science that studies how to build social capital and achieve social discipline through participatory learning and decision making. The use of restorative practices helps to:

- reduce crime, violence, and bullying
- restore and strengthen relationships
- repair harm
- improve human behavior
- strengthen civil society
- provide effective leadership

"The IIRP distinguishes between the terms restorative practices and restorative justice. We view restorative justice as a subset of restorative practices. Restorative justice is reactive, consisting of formal or informal responses to crime and other wrongdoing after it occurs. The IIRP's definition of restorative practices also includes the use of informal and formal processes that precede wrongdoing, those that proactively build relationships and a sense of community to prevent conflict and wrongdoing."

# Five Characteristics Of Restorative Practices

## **RELATIONSHIPS:**

Developing caring connections and finding common ground

## **RESPECT:**

Listening to others' opinions and valuing them

## **RESPONSIBILITY:**

Being accountable for actions taken

## **RESTORATION:**

Repairing harm that has been caused

## **REINTEGRATION:**

Ensuring all remain included and involved

## Examples of the Range of Restorative Practices that can be Integrated into a Criminal-Justice System

- Restorative-Justice Conferences
- Family Group Decision-Making (FGDM)
- Sentencing Circles
- Circles of Support (for Victims)
- Circles of Support and Accountability (COSAs) (to Promote Desistance from Crime and Other Aims)
- Compassionate Witnessing Circles (Trauma-Focused)
- Community Circles (to Foster Dialogue About Crimes Having Community-Wide or Neighborhood Impact)

# Positive Outcomes of Restorative Practices & Restorative Justice: Examples

- Reduction in Recidivism
- Victim Satisfaction
- Victims' Emotional Restoration (e.g., Decrease in Fear of Being Victimized Again)
- Decrease in Victims' Desire for Revenge
- Reduction of Post-Traumatic Stress Symptoms (PTSS)
- Cost Savings

# Incorporation of RP into schools

- History
- School to Prison pipeline
- SB100 in IL
- Examples & connection to RJTF work

# Whole School Approach

