



# CRIMINAL JUSTICE TOPIC: NEGATIVE

National Federation of State  
High School Associations



Resolved: The United States federal government should enact substantial criminal justice reform in the United States in one or more of the following: forensic science, policing, sentencing.

A look at possible negative arguments, provided by Rich Edwards, Baylor University

## NEGATIVE TOOLBOX

- ❖ Topicality
- ❖ Disadvantages
- ❖ Case
- ❖ Counterplans
- ❖ Kritiks



A brief look at Disadvantages and Case Arguments will be provided here; see other NFHS slide series for Topicality and Counterplans. Kritiks are not acceptable in all parts of the country and will not be discussed here.



# DISADVANTAGE: MOVEMENTS

- Momentum for prison abolition and defunding of police departments is building at present.
- Criminal justice reform co-opts abolition movements.
- Criminal justice reform leads to more social control.

Bill Keller, (editor in chief), MARSHALL PROJECT, June 13, 2019 retrieved Feb. 20, 2020 from <https://www.themarshallproject.org/2019/06/13/what-do-abolitionists-really-want>

“Abolition has become a rallying cry for the progressive wing of the justice reform movement,” Jeremy Travis told me. “NO NEW JAILS. NO MORE MONEY FOR POLICE. ABOLISH ICE. ABOLISH PRISONS.” Travis, who oversees criminal justice issues for the Arnold Ventures philanthropy, has spent a career in the system, most recently as president of the John Jay College of Criminal Justice in New York. (Disclosure: Laura and John Arnold, the founders of Arnold Ventures, are donors to The Marshall Project, my former employer.) “There is lots of energy behind this reframing of the ‘reform’ agenda,” Travis said.





# DISADVANTAGE: ELECTIONS

- At present, Trump will lose the 2020 election, but it remains closer than current predictions.
- Trump could recover among independent voters if he were to be perceived as embracing criminal justice reform.
- A second Trump term will cause a climate change disaster.

Michael Tanner, (Sr. Fellow, Cato), NATIONAL REVIEW, May 29, 2019 retrieved March 1, 2020 from <https://www.nationalreview.com/2019/05/criminal-justice-reform-bipartisan-issue/>

But there is also a large degree of politics behind the sudden importance of criminal-justice reform on the campaign trail. Most important, Democratic frontrunner Joe Biden is perceived as being vulnerable on the issue. Biden supported and partially wrote the 1994 Violent Crime Control and Law Enforcement Act, which led to an increase in incarceration — especially among African Americans. He also supported and sponsored several pieces of legislation that enhanced sentencing for drug-related crimes, once again contributing to the mass incarceration of minorities.





# DISADVANTAGE: FEDERALISM

- At present, federalism is alive and well in the United States.
- Federal mandates in the area of criminal justice reform upset the balance of federalism.
- Undermining federalism destroys the resilience necessary to preserve freedom and save human civilization.

R.J. Joyce (policy analyst), WILL FEDERALISM SURVIVE CORONAVIRUS? Apr. 7, 2020. Retrieved Apr. 19, 2020 from <https://www.smerconish.com/news/2020/4/7/will-federalism-survive-coronavirus>

It is messy. It is not coherent. However, federalism, much like democracy and capitalism, not only preserves freedom through free markets and legal tension, but also offers a laboratory for policy approaches and innovation that ultimately places the United States in the best position to weather emergencies like the pandemic we now face. So, the answer to citizens' present frustrations is not a greater federal government role; but rather, this November, citizens should pay as much attention to their local race for state representative as they do the race for President. Long live federalism.





# DISADVANTAGE: COURT BACKLASH

- Despite his grumbling, Trump currently obeys Supreme Court rulings.
- Trump will defy the Supreme Court if it invalidates policies deemed essential to his base.
- Defying the Supreme Court will destroy the rule of law with disastrous consequences.

Thor Benson, (Atlantic Contributor) ATTN, Feb. 3, 2017 retrieved Feb. 20, 2020 from <http://www.attn.com/stories/14672/what-happens-if-trump-tries-defy-courts>

A constitutional crisis: Any president defying the courts could cause a constitutional crisis. "If the president were to tell [federal employees] to disobey a court order, then presumably the court would hold those officers in contempt," Adam Winkler, a professor of constitutional law at UCLA, told ATTN:. "They could, possibly, even hold President Trump in contempt," Winkler said. "It's not clear exactly how that would work. It would be a constitutional crisis of the sort that maybe we're likely to get in a Trump administration."





# DISADVANTAGE: HEGEMONY BAD

- U.S. credibility on human rights is low now, undermining U.S. soft power and leadership around the world.
- The affirmative case claims to restore U.S. soft power on human rights and re-establish U.S. global leadership.
- U.S. global leadership results in unending wars.

Stephen Wortheim, (Research Scholar, Saltzman Institute of War and Peace at Columbia U.) NEW YORK TIMES, Sept. 14, 2019 retrieved June 26, 2020 from

<https://www.nytimes.com/2019/09/14/opinion/sunday/endless-war-america.html>

In the Middle East, endless war began when the United States first stationed troops permanently in the region after winning the Persian Gulf war in 1991. A circular logic took hold. The United States created its own dependence on allies that hosted and assisted American forces. It provoked states, terrorists and militias that opposed its presence. Among the results: The United States has bombed Iraq almost every year since 1991 and spent an estimated \$6 trillion on post-9/11 wars.





# DISADVANTAGE: RESURGENCE OF CRIME

- Crime rates are falling now.
- Substantial criminal justice reform undermines deterrence and promotes crime.
- The resurgence of crime undermines the U.S. economy and has a devastating impact on minority groups.

Patrick Sharkey, (Prof., Sociology, New York University), *UNEASY PEACE: THE GREAT CRIME DECLINE, THE RENEWAL OF CITY LIFE, AND THE NEXT WAR ON VIOLENCE*, 2018, 181.

The decline in violence has led to stunning benefits for the most disadvantaged segments of American society, most notably young African American males. Every segment of the population has experienced a decline in violent victimization, but the most disadvantaged groups of Americans have benefited the most. The drop in the homicide rate is one of the most important public health breakthroughs of the past several decades, saving tens of thousands of black lives and reducing the racial gap in life expectancy.





# CASE RESPONSE: GEORGE FLOYD JUSTICE IN POLICING ACT

- Federal solutions trade off with defunding of police and other grass-roots level changes.
- The U.S. Justice Department cannot be trusted to enforce civil rights protections.
- States and localities are best to address police reform.

Weihau Li & Humera Lodhi, (Fellows, The Marshall Project), WHICH STATES ARE TAKING ON POLICE REFORM?, June 18, 2020. Retrieved June 26, 2020 from <https://www.themarshallproject.org/2020/06/18/which-states-are-taking-on-police-reform-after-george-floyd>

Eighteen days after George Floyd was killed by a Minneapolis police officer, the Minnesota state Legislature introduced 48 bills in a special session on law enforcement. On the same day, Iowa Gov. Kim Reynolds signed a new bill restricting police chokeholds, and New York Gov. Andrew Cuomo signed a series of police reforms into law, including repealing an obscure law, section 50-a, that shielded police disciplinary records from public scrutiny.





# CASE RESPONSE: INDEPENDENT CRIME LABS

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- Most crime labs are professionally accredited.
- Federal oversight adds nothing; federal agencies serve only the political interests of the President.
- States are now providing oversight of crime labs and this is superior to federal control.

Radley Balko, (Staff) WASHINGTON POST, June 7, 2018. Retrieved Apr. 3, 2020 from Nexis Uni. According to the Bureau of Justice Statistics, 88 percent of the 409 publicly-funded forensic crime labs in the United States are accredited. Unaccredited labs are often very small - less than ten people - and offer services in a limited number of disciplines. In addition to forensic laboratories, laboratories performing other types of tests are accredited according to the same international standard.





# CASE RESPONSE: REFORM DNA COLLECTION AND TESTING

- DNA collection and testing exonerates the innocent.
- The reliability of DNA testing is undisputed.
- Familial DNA searching is already restricted by FBI policies.

Peter Neufeld, (Founder, Innocence Project), DNA'S REVOLUTIONARY ROLE IN FREEING THE INNOCENT, Apr. 18, 2018. Retrieved Apr. 8, 2020 from <https://www.innocenceproject.org/dna-revolutionary-role-freedom/>

In 1992, Barry Scheck and Peter Neufeld started the Innocence Project as a legal clinic at Benjamin N. Cardozo School of Law. The idea was simple: if DNA technology could prove people guilty of crimes, it could also prove that people who had been wrongfully convicted were innocent. Research shows that 99.9% of human DNA is identical, but that .1% can be used in forensic labs to differentiate one individual from another.





# CASE RESPONSE: REFORM OF TESTING RAPE KITS

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- Rapid DNA testing is reducing the backlog.
- The recently-passed Debbie Smith Reauthorization Act provides federal funding to reduce the backlog.

Emma Greger, (JD Candidate), U. RICHMOND LAW REVIEW, May 2018, 942.

While Rapid DNA technology has the potential to revolutionize every aspect of the criminal justice system, from arrest to the post-conviction appeals process, there has been particular excitement centered around its potential to reduce the rape kit backlog.

Benjamin Fearnow, (Staff, Newsweek), *Trump Reauthorizes Debbie Smith Act to Eliminate Rape Kit Backlogs*, Jan. 1, 2020. Retrieved Apr. 21, 2020 from <https://www.newsweek.com/rape-kit-backlog-dna-testing-donald-trump-reauthorized-debbie-smith-act-sexual-assault-cases-1479979>

President Donald Trump signed legislation Monday that allocates funding to help states clear the backlog of more than 100,000 rape kits across the country, ending several years of nationwide initiatives to get federal support.





# CASE RESPONSE: REFORM USE OF FACIAL RECOGNITION SYSTEMS

- Facial recognition systems are essential for policing airport security, human trafficking, finding missing persons, and numerous other important functions.
- The accuracy of facial recognition systems is improving at a rapid rate.

Kimberly Del Grego, (Deputy Dir., Criminal Division, FBI), FACIAL RECOGNITION TECHNOLOGY: PART II, House Hrg., JUNE 4, 2019, 4.

It is crucial that authorized members of law enforcement and national security communities have access to today's biometric technologies to investigate, identify, apprehend, and prosecute terrorists and criminals. The FBI's Next-Generation Identification, or NGI system, which includes facial recognition, aids in our ability to solve crimes across the country. Facial recognition is an investigative tool that can greatly enhance law enforcement capabilities and protect public safety.





# CASE RESPONSE: BAN PREDICTIVE POLICING TECHNIQUES

- Predictive policing aids in crime prevention.
- Predictive policing software is essential in finding child predators and restricting human trafficking.
- Predictive policing software provides the oversight capability for spotting unprofessional police behavior.

Andrew Ferguson, (Prof., Law, Clarke School of Law), VANDERBILT LAW REVIEW, Mar. 2019, 568.

New data surveillance systems built by the police can also be used to monitor systemic and recurring police practices. In every Big Brother-esque example discussed above, technology also captures police-citizen interactions in new and revealing ways that can help expose existing police abuses. The great irony of the modern surveillance state is that law enforcement accidentally designed a system that can monitor the police better than its citizens.





# CASE RESPONSE: REFORM POLICING JURISDICTION IN INDIAN COUNTRY

- Cross-deputization agreements offer the best answer for solving jurisdictional problems in Indian Country.
- The federal government has demonstrated that it should not be relied on as the instrument of solving policing problems in Indian Country.

Jessica Allison, (JD Candidate), UNIVERSITY OF COLORADO LAW REVIEW, Winter 2019, 246-247.

Cross-deputization agreements are a common remedial measure for this jurisdictional web. These agreements allow different law enforcement agencies or governmental entities 154 to exercise jurisdiction where they otherwise would not be able; for example, an agreement might allow state officers to respond to a crime in Indian Country between two Indians. This measure is particularly beneficial in instances in which a tribe lacks sufficient law enforcement officers but the state or surrounding county does not. In the case of sexual violence, cross-deputization agreements can ensure there is a prompt and efficient law enforcement response without the preliminary jurisdictional questions.





# CASE RESPONSE: REFORM MILITARY-STYLE POLICING

- Most of the equipment provided through the 1033 program has nothing to do with military weapons.
- Military equipment is often necessary to deal with major natural disasters.

Michael Wester, (J.D.), UNIVERSITY OF ILLINOIS LAW REVIEW, 2016, 753.

In fact, most of the \$ 5.1 billion that has been given out to police forces throughout the course of the program has actually been nontactical gear such as sleeping bags and filing cabinets. For example, the Los Angeles Schools Police Department has received over \$ 700,000 worth of nonweapon supplies through the 1033 program. Moreover, it is important to note, that even some of the nonroutine gear, such as bulletproof vests, can help save lives and keep agents safe as they protect the community.





# CASE RESPONSE: REFORM THE POLICING OF IMMIGRANTS

- State and local sanctuary policies offer the optimal solution for the protection of vulnerable immigrant populations.
- Ironically, the hostility of the Trump administration to immigrants has backfired, resulting in the re-invigoration of sanctuary policies.

Huyen Pham & Pham Hoang Van, (Prof., Law, Texas A&M U./Prof., Economics, Baylor U.), *NEW YORK UNIVERSITY LAW REVIEW*, Apr. 2019, 129.

First, the most visible manifestation of the Trump Effect was the sharp growth of subfederal immigration regulation in 2017, regulation that was overwhelmingly pro-immigrant in nature. Much of this growth occurred at the city and county level; in 2017, cities and counties enacted more immigration regulations in this single year than was ever enacted in the previous twelve years added together (2005-16). These laws are almost uniformly immigrant-protective, focusing on policing laws that limit the authority of local police to cooperate with federal immigration enforcement, or laws protecting access to local services regardless of immigration status.





# CASE RESPONSE: REFORM THE POLICING OF JUVENILES IN SCHOOLS

- The increased use of SROs in schools has not promoted the school-to-prison pipeline – The claim is empirically false, given that juvenile arrests are in steep decline.
- SROs enhance safety in schools.

MST Services, YOUTH CRIME RATES DROP, BUT PROGRESS IS STILL NEEDED, Nov. 14, 2018. Retrieved May 25, 2020 from <https://info.mstservices.com/blog/juvenile-crime-rates>

From the peak offense era of the 1990s to today, juvenile crime arrests have dropped across the board in leaps and bounds. Robbery and aggravated assault rates have both dropped by 70% since the 1990s, simple assaults are down by 49%, and murder rates have fallen a staggering 82%.





# CASE RESPONSE: REFORM POLICE USE OF CIVIL ASSET FORFEITURE

- The Supreme Court's decision in *Timbs v. Indiana* solves for abuses of civil asset forfeiture.
- Civil asset forfeiture, when used responsibly, serves an important role in deterring organized crime and money laundering.

Alan Pyke, (Staff, ThinkProgress), SUPREME COURT'S NEW RULING ON CIVIL ASSET FORFEITURE IS PRETTY HUGE, Feb. 20, 2019. Retrieved Apr. 6, 2020 from <https://archive.thinkprogress.org/supreme-court-asset-forfeiture-police-timbs-v-indiana-a0a33df1f886/>

States cannot ignore the Constitution when imposing fines or confiscating people's property in civil or criminal cases, the Supreme Court unanimously ruled Wednesday. The decision in *Timbs v. Indiana* means change is on the wind for the widespread and chronically abused law enforcement tactic of civil asset forfeiture.





# CASE RESPONSE: REFORM POLICE SURVEILLANCE IN MUSLIM COMMUNITIES

- The federal Countering Violent Extremism (CVE) program was not started in the Trump administration – it started in the Obama administration, and continues to be recommended by the UN.
- The Trump administration has continued the CVE program in much the same format as originated by Obama.

Seamus Hughes, (Deputy Dir., Program on Extremism at George Washington U.), TRUMP'S DOMESTIC COUNTERING VIOLENT EXTREMISM POLICIES LOOK A LOT LIKE OBAMA'S, Mar. 10, 2019. Retrieved Apr. 15, 2020 from <https://www.lawfareblog.com/trumps-domestic-countering-violent-extremism-policies-look-lot-obamas>

The terrorism prevention bureaucracy has been quietly and slowly grinding along for two administrations. If you liked domestic CVE policies during the Obama administration, you should like them under the Trump administration.





# CASE RESPONSE: REFORM POLICING OF VIOLENCE AGAINST WOMEN

- Increasing criminal penalties will not solve for domestic violence; it is a problem best solved by community service agencies, rather than by police.
- Mandatory arrest policies end up harming victims more than perpetrators of violence.

Michelle Jacobs, (Prof., Law, U. of Florida College of Law), WILLIAM & MARY JOURNAL OF RACE, GENDER, AND Fall 2018, 87.

During the period leading to the enactment of VAWA, Black women and Latinas warned that mandatory arrest policies might actually increase the rate of violence in their communities. The mainstream anti-violence advocates devalued the validity of this concern, usually cloaked in eerily paternalistic language. By 2002, it was clear that data was developing that suggested in some cases, advocates for Black women and Latinas were right, violence could increase as a result of mandatory arrest.





# CASE RESPONSE: ABOLISH THE DEATH PENALTY

- The death penalty serves a deterrent and incapacitation function.
- When the death penalty is abolished, the alternative is “life without parole” – a sentence that is in some ways more harmful.

Marah McLeod, (Prof., Law, Notre Dame Law School), VIRGINIA LAW REVIEW, 2018, 1151.

For murderers who are extremely dangerous and who cannot be confined safely except by solitary confinement or execution, it is not clear that solitary confinement is the more morally or legally acceptable alternative. It may be that restraining a person in near-total isolation corrodes his mind and spirit so dreadfully that it may be at greater odds with the "concept of human dignity at the core of the [Eighth] Amendment" than would be his execution.





# CASE RESPONSE: ELIMINATE USE OF IMPRISONMENT FOR DRUG USERS

- Drug offenses are not a major cause of incarceration.
- Most sentences for drug offenses are short.
- Ending the war on drugs will not reverse mass incarceration.

Michael O'Hear, (Prof., Law, Marquette U.), *THE FAILED PROMISE OF SENTENCING REFORM*, 2017, 199.

Calls to end mass incarceration by emptying the prisons of nonviolent offenders typically rest on mistaken assumptions about the importance of the War on Drugs in driving the imprisonment boom. Many Americans are now strongly predisposed to view the War on Drugs in negative terms and thus too quick to assign it the primary blame for mass incarceration. There is an ironic echo here. In the mid- and late 20th century, many Americans were strongly predisposed to view drug distribution in negative terms and thus too quick to assign it the primary blame for the nation's increasing crime rates. Drug enforcement is now scapegoated as drug distribution once was. In any event, whatever the other failings of the War on Drugs, it did not fill the nation's prisons with plainly nonviolent drug offenders.





# CASE RESPONSE: ABOLISH MANDATORY MINIMUM SENTENCING

- Only a small percentage of prisoners are there because of mandatory minimum sentences.
- Most sentences are short.
- The rate of imprisonment is now decreasing.

Steven Cook, (President, National Association of Assistant U.S. Attorneys), FEDERAL SENTENCING REPORTER, Oct. 2015. Retrieved Apr. 23, 2020 from Nexis Uni.

The central facts are simple and uncontested: The United States Sentencing Commission reports that only 14.5 percent of prisoners are serving sentences based on mandatory minimum penalties of any type (not just drug traffickers) including, among others, armed career criminals, serial bank robbers, and terrorists.”





# CASE RESPONSE: LIMIT PROSECUTOR POWER IN PLEA BARGAINING

- Plea bargaining benefits both the prosecution and the defense.
- The U.S. justice system would collapse without plea bargaining.
- The claim that public defenders do a poor job in representing their clients is false.

Kelsey Henderson, (Prof., Criminology, Portland State U.), A SYSTEM OF PLEAS: SOCIAL SCIENCE'S CONTRIBUTIONS TO THE REAL LEGAL SYSTEM, 2019, 44.

Public defenders generated more favorable outcomes for their clients than did assigned counsel. Defendants of assigned counsel were more likely to be convicted of the most serious offense, receive longer expected sentences, and suffered a longer wait period from arrest to adjudication than those of public defenders.





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