

RECOMMENDATIONS TO FUNDERS

If there ever was a time to broaden our vision of what we're about and what we want to achieve, it is now...If we stay in our silos and only support those organizations and campaigns that closely match our program requirements, we will probably miss opportunities to make a bigger difference.

– Aaron Dorfman, National Committee for Responsive Philanthropy, Cathy Cha, Evelyn and Walter Haas, Jr. Fund, Jacqueline Martinez Garcel, Latino Community Foundation, Lateefah Simon, Akonadi Foundation, "Questions for Philanthropy to Consider After 100 Days of Trump"

The rules have changed and we need a new playbook.

– Participant, Challenging Criminalization Through an Intersectional Lens Convening

We are living in a rapidly changing and dangerous political climate in which criminalization, police violence, mass incarceration and deportation are poised to dramatically increase. In order to effectively respond to the growing crisis of criminalization, **philanthropic partners will need to take risks, act boldly, make room for trial and error** as groups elaborate responses to emerging conditions, **and invest for the long term. Shifting deeply entrenched policies and public narratives around violence, safety, and "criminals" takes a long time, and doesn't lend itself to frequent, visible or short-term "wins."** It also requires organizations to **have space and time to innovate, be creative, and seize on opportunities as they present themselves** in a rapidly evolving political climate – which requires flexible resources.

WHAT IT COULD LOOK LIKE

Solidaire

Through its Movement R&D Fund, Solidaire supports movement leaders to explore, iterate, and test new ideas and tactics with flexible funding, without requiring specific answers, deliverables or outcomes. This approach is based on the foundation's core principle of following the lead of those on the front lines of social change.

I. INVEST IN ORGANIZATIONS CURRENTLY WORKING TO CHALLENGE CRIMINALIZATION

Organizations currently focused on challenging criminalization will require a **significant injection of new, long-term resources** to flexibly and nimbly meet the challenges of the current political climate. **Specifically, support is urgently needed to:**

- **Build and expand the existing knowledge base** around mechanisms and impacts of criminalization on different communities and identities;
- **Build skills and power to resist** efforts to increase or expand criminalization;
- Expand, scale up and amplify current efforts through **leadership, organizational and infrastructure development and increased communications capacity;**
- **Convene and build networks** at the national, state and local levels across immigrant rights, criminal justice, Indigenous rights, and reproductive, sexual, gender, and disability justice sectors.

II. INVEST IN ORGANIZATIONS IN FIELDS FACING INCREASING CRIMINALIZATION

Organizations working in the **fields of reproductive, gender, sexual and disability justice** will require resources to:

- **Build knowledge, capacity and expertise** on criminal legal issues;
- **Support thought leadership and research** to develop and advance theories of criminalization through a gender, sexual and reproductive justice lens;
- **Participate in larger coordinated efforts** to challenge criminalization and advance gender-specific and gender-inclusive advocacy goals.

WHAT IT COULD LOOK LIKE

Astraea Lesbian Foundation for Justice

Building on a 40 year history of funding at the intersections of criminalization and LGBTQ rights, since 2013 the Astraea Lesbian Foundation for Justice has supported an Anti-Criminalization and Freedom from Violence cohort of grantees through multi-year grants to groups working to reduce criminalization of LGBTQ communities, develop community-based systems of care, healing and justice, and bring national visibility to criminalization of LGBTQ people within dialogues around racial justice, mass incarceration and migrant justice.

III. INVEST IN BUILDING ALTERNATIVE RESPONSES TO VIOLENCE AND HARM

In order to effectively reduce criminalization, it is necessary to develop and scale up alternative responses to violence that promote safety while creating meaningful opportunities for accountability and transformation. It is therefore critical for funders to **invest in groups envisioning, practicing and piloting responses to violence** – including gang violence, domestic violence and sexual assault, and violence against trans women - that don't further criminalization.

WHAT IT COULD LOOK LIKE

Audre Lorde Project & Arcus Foundation

In 2010 organizations and individuals working to develop alternative responses to violence from the perspective of women and LGBTQ people of color came together, with the support of the Audre Lorde Project and the Arcus Foundation, for an unprecedented national meeting to share frameworks, strategies, successes, sticking points, critical questions and challenges to continuing and scaling up local efforts to address harm without engaging the criminal legal system.

Participants identified a number of areas for future work and collaboration that could benefit from funding support, including regular convenings and publications, an online clearing house, radio programs/podcasts, videos and other multi-media tools, national days of action, and regular strategy labs for skill sharing, problem-solving and evolving strategies and infrastructures.[†] Convening participants have created a number of tools for organizations and individuals seeking to develop alternative responses to violence, including the Safe Outside the System organizing framework, available at alp.org, and the Creative Interventions Toolkit, available at creative-interventions.org.

[†] The Audre Lorde Project, *Report of the National Gathering on Transformative Justice & Community Accountability Strategies for Women of Color and Lesbian, Gay, Bisexual, Two-Spirit, Trans & Gender Non-Conforming People of Color*, 2010.

When leveraging resources toward these goals, funders should:

A. Commit specific and significant funds to grassroots organizations led by people directly targeted by criminalization, and particularly criminalized people of color.

Common sense tells us that people closest to the problem are closest to the solution. Individuals and communities targeted for criminalization are experts in the multiple and shifting forms it takes, the contexts in which it manifests, and the impacts it has on their lives and those of their families and communities. They are also best positioned to identify what is needed to address the conditions contributing to criminalization, including harm within our communities. This is particularly true of people living at the intersections of multiple identities and experiencing criminalization on many fronts, including women and LGBTQ people of color, and people of color living with HIV. Additionally, supporting the leadership, voice, and vision of people directly impacted by criminalization is critical to disrupting narratives that dehumanize and demonize criminalized people.

WHAT IT COULD LOOK LIKE

Open Society Foundations & Atlantic Philanthropies

The Fund for Fair and Just Policing was initiated by the Open Society Foundations and Atlantic Philanthropies in 2011 to support a multi-year campaign to challenge discriminatory “stop and frisk” practices, “broken windows” policing, and criminalization of communities of color in New York City. Funding partners made a commitment to awarding the majority of funds to grassroots groups led by or people impacted by discriminatory policing and criminalization, including women, LGBTQ people, immigrants, and people involved in the drug and sex trades. This enabled these groups to effectively partner with policy and legal advocacy organizations, service providers, and researchers in a successful multi-strategy campaign. The fund also made a substantial commitment to supporting campaign infrastructure that would amplify grassroots voices and build the skills and power of grassroots groups.

B. Encourage communications and accountability from national organizations and policy advocacy groups to local grassroots groups led by people directly impacted by criminalization.

All too often, national legal and policy advocacy organizations receive the bulk of criminal justice funding and resources, but remain disconnected from the communities who are direct targets of the issues they work on. This ultimately diminishes the impact of their work and disempowers criminalized communities. Funding to advocacy groups not led by people directly impacted by criminalization should include both incentives and requirements to meaningfully consult with and be accountable to the communities they work on behalf of.

C. Commit to funding consensual, equitable, accountable and non-extractive partnerships.

Fund consensual, equitable, accountable and non-extractive partnerships between grassroots groups and organizations and technical assistance providers of their choice who can offer additional expertise in areas of research, communications, and legal, policy, and budgetary advocacy. **Funding grassroots groups at a level that enables their full and equal participation is essential to the success of such partnerships.**

WHAT IT COULD LOOK LIKE

Women With a Vision & Center for Constitutional Rights

In 2010, Women with a Vision, founded in 1989 by a grassroots collective of Black women in response to the spread of HIV/AIDS in communities of color, heard from women coming into their offices that they were facing insurmountable obstacles in accessing services and employment because they had been branded as “sex offenders” upon conviction of “crime against nature by solicitation” (CANS), which penalizes offers of oral or anal sex in exchange for compensation.

The organization identified and partnered with individual public interest lawyers, a local civil justice clinic and the Center for Constitutional Rights to develop a communications, organizing, litigation and legislative campaign centering the voices of their constituents. The campaign brought together civil, women’s, reproductive, sex workers’ and LGBTQ rights organizations, and ultimately led to the elimination of disparate penalties, including the sex offender registration requirement, for individuals convicted of CANS. Over 800 individuals were removed from the sex offender registry. Women with a Vision was able to leverage the success of this campaign to negotiate a harm reduction-based diversion program for women charged with prostitution-related offenses in New Orleans, and is working to reduce criminalization through a state legislative campaign.

DO'S AND DONT'S



Consistently set aside funding to make sustained, long term investments in efforts to challenge criminalization across sectors and program areas, and to facilitate cross-issue and cross-community organizing in this field.



Redefine "wins" to include building individual, organizational, and community power, as well as subtle shifts in criminalizing narratives that will yield long-term results in policy and practice. Develop innovative indicators of success, using transformational rather than transactional metrics. Recognize that what constitutes a "win" differs depending on context and communities – sometimes, just surviving is winning.



Expand support beyond campaigns targeting criminal laws, policies or practices to long-term movement building that develops knowledge, builds leadership, shifts culture, and generates the genuine solidarity across communities that is necessary to make policy campaigns successful, ensure effective implementation, and transform the political landscape.



Invest in infrastructure, including centralized coordination, to support nationally networked local and state organizing, while simultaneously funding network partners to ensure capacity to fully participate in network activities.



Prioritize development of thought leadership from directly impacted communities. Invest in fellowships for grassroots organizers, and support increased research and communications capacity among grassroots groups and think tanks led by people directly impacted by criminalization.



Look beyond current grantees. The most effective work to challenge criminalization often happens on a local, grassroots level, and sometimes outside of traditional 501(c)(3) structures. Look for creative ways to support grassroots groups working on the frontlines without access to significant sources of support from major philanthropic partners.



Make resources available for healing, supporting individual and collective leadership, and ensuring individual and organizational sustainability. Criminalization, and efforts to combat it, are deeply traumatizing, and ongoing. Recognize that organizations may need to set aside time and resources to focus on a campaign to support a member or leader who is currently being criminalized, to address internal conflict fueled by trauma, or to recover from a grueling campaign or intense period of threat or organizing.



Invest in meeting immediate needs of criminalized people by supporting pre-arrest diversion programs, bail funds, and funds to provide legal services to people targeted for criminalization and deportation while simultaneously supporting efforts to end criminalization.

DO'S AND DONT'S

Groups currently working to challenge criminalization have very clear recommendations to philanthropic partners about strategies that are counterproductive to their work:



DON'T invest in police, prisons, detention centers or other systems that contribute to increased criminalization or harm to communities. Do support organizations working to reduce the harm of these institutions through training, policy change, and individual and systemic advocacy.



DON'T create rapid response funds that require groups to identify "new" or "urgent" problems. Instead, create easily accessible pools of funding that groups can tap into as needed to deepen their work, act on a strategic opportunity, come together to strategize collectively, build their capacity, or secure healing resources.



DON'T support campaigns that contribute to increased criminalization by advancing criminalizing narratives of "good" vs. "bad" people, or "deserving" vs. "undeserving" communities (or victims, drug users, immigrants, etc.).



DON'T support campaigns that call for increased or expanded policing and punishment.



DON'T support campaigns that tokenize or silence the participation of people directly impacted by criminalization.



DON'T set unrealistic standards of "success" for criminalized individuals or communities – not everyone will be able to successfully avoid subsequent criminal charges, set backs, or the effects of ongoing trauma of criminalization given the structural obstacles faced by criminalized individuals and communities.

CONCLUSION

We are living in dangerous times, in which the communities we are a part of and support are under threat on multiple fronts – mounting immigration raids and deportations, increasing police militarization and violence against communities of color, emboldened discrimination against transgender and LGB people, expanding attacks on health care and reproductive autonomy, massive divestment from social programs. Each of these threats is mediated and amplified by the narratives and machinery of criminalization.

“What would it look like if LGBTQ people, Black folks, Brown folks, immigrants, women, working class and poor people could live Free From Fear in the variety of places we call home?”

– Southerners on New Ground

We are also living in a time of tremendous opportunity – to take bold stands for the values we embrace, and take bold steps to protect our communities, defend the gains we have achieved, and articulate a vision of the society we want to build. Confronting the crisis of criminalization is central and essential to meeting these challenges. We simply cannot make or even maintain progress in advancing social, racial, gender, immigrant and economic justice without recognizing and addressing the ways in which the web of criminalization impedes our individual and collective goals in each of these fields.

While the scale of the crisis may seem daunting, there are concrete steps funders can take today – by assessing the ways in which criminalization is operating in their field, evaluating the effectiveness of their current grant making in interrupting criminalization and its consequences, and making a commitment to a substantial and sustained investment across program areas, foundations, and sectors in efforts led by, or accountable to, diverse communities directly impacted by criminalization. No matter the funding strategy, there are opportunities to take immediate action – in Appendix A, we outline 9 key strategies for challenging criminalization and offer examples of efforts consistent with our recommendations that can guide investment by funders.

Confronting the crisis of criminalization is not an end point, but rather a means to an end. It is an essential element of strategies to end mass incarceration, deportation and detention, end poverty and homelessness, promote youth leadership, protect the rights of people with disabilities, and achieve reproductive justice and LGBTQ liberation. It is also a goal that is aligned with efforts to increase safety and security in our communities – which must include safety from the violence of policing, criminalization, and prisons.

Ultimately, by confronting the crisis of criminalization, we are creating the communities, human relationships, and world we want to see, in the face of threats to our values, our progress, and our humanity.

We urge you to answer this call.

ENDNOTES

- 1** The Sentencing Project, *Criminal Justice Facts*, available at: sentencingproject.org/criminal-justice-facts/; The Sentencing Project, *Race & Justice News: Native Americans in the Justice System* (March 2016), available at: sentencingproject.org/news/race-justice-news-native-americans-in-the-justice-system/; Ashley Neil, *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, The Sentencing Project (June 2016), available at: sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/
- 2** The Sentencing Project, *Fact Sheet: Trends in U.S. Corrections* (June 2017), available at: sentencingproject.org/publications/trends-in-u-s-corrections/; The Sentencing Project, *Fact Sheet: Incarcerated Women and Girls* (November 2015), available at: sentencingproject.org/publications/incarcerated-women-and-girls/
- 3** Elizabeth Swavola, Kristine Riley, Ram Subramanian. *Overlooked: Women and Jails in an Era of Reform*. New York: Vera Institute of Justice, 2016.
- 4** The Sentencing Project, *Fact Sheet: Incarcerated Women and Girls* (November 2015), available at: sentencingproject.org/publications/incarcerated-women-and-girls/
- 5** Grant, Jaime M., Lisa A. Mottet, Justin Tanis, Jack Harrison, Jody L. Herman, and Mara Keisling. *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*. Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011.
- 6** See Federal Bureau of Investigation, *Crime in the United States, 2015, 2014, 2013, 2012, 2011, 2010*, ucr.fbi.gov/crime-in-the-u.s
- 7** Peter Wagner and Bernadette Rabuy, *Mass Incarceration: The Whole Pie* (2017), available at: prisonpolicy.org/reports/pie2017.html
- 8** See Ames Grawert and James Cullen, *Crime in 2017: A Preliminary Analysis*, Brennan Center for Justice (2017), available at: brennancenter.org/publication/crime-2017-preliminary-analysis.
- 9** “Broken windows” policing is based on the unproven theory that aggressive enforcement of minor offenses prevents violent crime.
- 10** National Law Center on Homelessness and Poverty, *Housing Not Handcuffs: Ending the Criminalization of Homelessness in U.S. Cities*, available at: nlchp.org/documents/Housing-Not-Handcuffs
- 11** Deborah J. Vagins, Jesselyn McCurdy, *Cracks in the System: Twenty Years of the Unjust Federal Crack Cocaine Law*, American Civil Liberties Union (2006), available at: aclu.org/other/cracks-system-20-years-unjust-federal-crack-cocaine-law

APPENDIX A: 9 KEY STRATEGIES YOU CAN FUND TO INTERRUPT THE CRISIS OF CRIMINALIZATION

Knowledge Creation and Resource Sharing

- Support community-driven and participatory research and analysis of forms and impacts of criminalization for different communities, including women, LGBTQ people, pregnant people, Muslim communities, Indigenous peoples, people with HIV and other stigmatized health conditions, people with disabilities, and rural communities;
- Support infrastructure and mechanisms for sharing and disseminating research findings in accessible forms among advocates and organizers;
- Support development of model policies and legislation, toolkits, communications strategies, and public education materials that address multiple communities' experiences of criminalization;
- Supports grassroots based think-tanks working to develop solutions to criminalization, violence, and harm rooted in community needs and resources;
- Support convenings of grassroots groups to share knowledge and analysis of current conditions of criminalization.

WHAT IT COULD LOOK LIKE

Black & Pink

In 2014, Black & Pink, an organization made up of over 7,000 LGBTQ prisoners and allies conducted a survey of its prisoner membership. Nearly 1,200 prisoners responded to a survey collaboratively developed with incarcerated members, producing the largest ever dataset on LGBTQ prisoners in the country. The results were used to develop dozens of policy recommendations aimed at ending the criminalization of LGBTQ people. These recommendations now drive the advocacy efforts of local Black and Pink chapters across the country, and of other local and national advocacy groups.

Get Yr Rights Network

In 2014 the Get Yr Rights Network developed a map of model policies for police interactions with LGBTQ people and a toolkit gathering organizing strategies, successes, and tools for challenging criminalization of LGBTQ youth. In 2017, BreakOUT! released a Vice2ICE toolkit on organizing across identities including race, sexual orientation, gender identity, age, country of origin, immigration status and language, developed in partnership with the New Orleans Congress of Day Laborers.

Solutions Not Punishment Coalition

In 2014 the Solutions Not Punishment Coalition (SNaPCo), a Black trans led coalition of organizations working to challenge criminalization in Atlanta, conducted a survey of transgender residents of Atlanta designed primarily by Black trans people. Based on results analyzed by peer researchers and summarized in a report titled *The Most Dangerous Thing Out Here is the Police*, the organization developed campaign demands, including decriminalization of “broken windows” offenses used to criminalize Black trans women, reform of police policies for interactions with transgender people, and investment in meeting needs identified by the transgender community.