

## RACIAL RECKONING IN A ‘WHITE UTOPIA’: OREGON’S 2021 CRIMINAL JUSTICE REFORM BILLS

By Sierra Paola<sup>1</sup>

### INTRODUCTION

In the national outcry that followed George Floyd’s murder during the summer of 2020, Portland, Oregon became a leader in demanding policing and criminal law reform.<sup>2</sup> Protests in Portland began in late May and reached a fever pitch by July when President Trump deployed federal officers to the city to suppress demonstrators. Officers detained protesters in unmarked cars and fired tear gas and non-lethal munitions into crowds—intensifying calls for change.<sup>3</sup>

Less than a year after the height of these protests, Oregon lawmakers passed 28 separate bills addressing criminal law and policing reform.<sup>4</sup> While many of these reforms represented differing strategies to addressing racial inequity in the criminal system, all were groundbreaking within the context of Oregon’s exceptionally racist, anti-Black history.<sup>5</sup> This paper analyzes the strategies that various Oregon stakeholders utilized in order to pass these reforms—despite the state’s anti-Black history—and how they may be implemented elsewhere.<sup>6</sup>

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2 Asitha Nagesh, *Portland protests: How a ‘hyper-liberal’ city’s racist past is resurfacing*, BBC (Sept. 3, 2020), <https://www.bbc.com/news/world-us-canada-53996159>.

3 *Portland protests: Federal agents ‘abuse power’ in arrests*, BBC (July 18, 2020), <https://www.bbc.com/news/world-us-canada-53453077>.

4 News Release, Danny Moran, Communications Director, Office of the House of the Speaker, Critical Policing and Criminal Justice Reforms Cross Finish Line (June 26, 2021), <https://www.oregonlegislature.gov/kotek/Documents/2021%20Session%20-%20Criminal%20Justice%20and%20Police%20Reform.pdf>.

5 *See id*; see Nina Stolic, *Oregon once legally banned Black people. Has the state reconciled its racist past?*, NAT’L GEOGRAPHIC (Mar. 8, 2021), <https://www.nationalgeographic.com/history/article/oregon-once-legally-barred-black-people-has-the-state-reconciled-its-racist-past>.

6 This paper uses “Black” as a proper noun to refer to the socially-created race of people whose ancestors are from Africa. In this way, “Black” refers to a group of individuals with shared experiences in the United States. “White” is likewise used as a proper

Part I reviews Oregon's long history of Black criminalization, from its inception as an all-White utopia to present-day policies that have caused severe racial disparities in the state's prison population. Part II explores the reforms to state criminal law that were passed during the 2021 legislative session and analyzes their approach and potential impact. Specifically, Oregon's three distinct approaches to addressing racial inequality: police reform, downstream harm reduction measures, and upstream prevention methods. Finally, Part III reviews how activists and legislators were able to achieve success and what strategies can be effective in achieving similar reforms elsewhere.

## PART I: OREGON'S ANTI-BLACK HISTORY

Despite its modern veneer of liberal politics and progressive social movements, Oregon's history is shrouded in anti-Black racism. According to the U.S. Census Bureau, only 2.2% of Oregon's population is Black or African American, while 86.7% is White.<sup>7</sup> The fact that Oregon's population has remained overwhelmingly White over the past 160 years is a direct result of successful Black exclusion laws, as well as an ongoing political and cultural climate of anti-Black ideology.<sup>8</sup>

### A. The Oregon Trail

During the 19<sup>th</sup> century, some 400,000 White settlers took to the Oregon Trail to claim "free" land in the West.<sup>9</sup> Black criminalization in Oregon began

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noun to identify how Whiteness functions in Oregon's social and political institutions. See Kwame Anthony Appiah, *The Case for Capitalizing the B in Black*, ATLANTIC (June 18, 2020), <https://www.theatlantic.com/ideas/archive/2020/06/time-to-capitalize-blackand-White/613159/>.

<sup>7</sup> *QuickFacts Oregon*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/OR/RHI125219#RHI125219> (last visited Jan. 16, 2022). Portland, Oregon's largest city, is 77.4% white and 5.8% Black or African American. *QuickFacts Portland city, Oregon*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/portlandcityoregon> (last visited Jan. 16, 2022). Portland is the Whitest big city in the United States. Emily Badger, *How the Whitest city in America appears through the eyes of its Black residents*, WASH. POST (Mar. 24, 2015), <https://www.washingtonpost.com/news/wonk/wp/2015/03/24/how-the-Whitest-city-in-america-appears-through-the-eyes-of-its-black-residents/>.

<sup>8</sup> Cheryl A. Brooks, *Race, Politics, and Denial: Why Oregon Forgot to Ratify the Fourteenth Amendment*, 83 OR. L. REV. 731, 733 (2004). Darrell Millner, former chair of the Black Studies Program at Portland State University, best summed up the state's continued overwhelming Whiteness as simply, "[i]t is not like Blacks didn't like the rain." ELINOR LANGER, *A HUNDRED LITTLE HITLERS* 210 (2003) (quoting Darrell Millner).

<sup>9</sup> Carmen P. Thompson, *Expectation and Exclusion: An Introduction to Whiteness, White Supremacy, and Resistance in Oregon History*, 120 OR. HIST. Q. No. 4, 358, 363 (2019) (detailing the core characteristics of Whiteness in Oregon's history as expectations for a right to claim "new" lands and exclusion as a means to retain that land).

in the 1840's and 1850's as White settlers passed a series of laws to both exclude Blacks from the state and prohibit slavery, the latter stemming not from altruism but a desire for a labor-friendly and homogenous White society.<sup>10</sup> Meanwhile, overt Black-exclusion laws arose from White settlers' fears they would be consumed managing "hostile" Native Americans in the region and they did not want to deal with multiple "unfriendly races."<sup>11</sup> In fact, Oregon's last explicit Black-exclusion law was included in the state's constitution in 1857, where it remained until its repeal in 1926.<sup>12</sup>

Although historians cite only one known instance in which a Black person was expelled from Oregon under the exclusion laws, the laws were indirectly effective in discouraging Black Americans from settling in Oregon during westward expansion; they made clear the state did not welcome Blacks.<sup>13</sup> Amidst this culture of exclusion, Oregon also utilized the law to criminalize Black people already residing in the state.

Apart from Black-exclusion laws, Oregon enacted legislation that explicitly discriminated against Blacks. For example, in 1862, Oregon forbade Blacks from serving on juries.<sup>14</sup> In 1866, the legislature passed an anti-miscegenation law that criminalized interracial marriage and empowered county clerks to investigate the racial pedigree of marriage license applicants.<sup>15</sup> The legislature also rescinded the state's ratification of the 14<sup>th</sup> Amendment and refused to adopt any law that permitted Blacks to enjoy equal rights.<sup>16</sup> Oregon's long and glaring history of racism is perhaps most apparent by the fact that it did not ratify the 14<sup>th</sup> Amendment until 1973, over 100 years after it passed in Congress.<sup>17</sup>

### B. Post-Reconstruction and "Klan State"

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10 ELIZABETH MCLAGEN, *A PECULIAR PARADISE A HISTORY OF BLACKS IN OREGON, 1788-1940*, 25–37, 60 (1980).

11 *Id.* at 24.

12 *Id.* at 28.

13 *Id.* at 23 (discussing the 1851 expulsion of Jacob Vanderpool from Oregon).

14 MCLAGEN *supra* note 9, at 64.

15 *Id.* at 23.

16 *Id.* at 74.

17 Brooks *supra* note 7, at 754. When finally ratified in 1973, many Oregonians were surprised to learn that the amendment had never been ratified. Oregon lawmakers acted quickly and inconspicuously to ratify the 14<sup>th</sup> Amendment as to not draw too much media and public attention. *Id.* (noting that *The Oregonian* buried the story on page 30 of its daily publication). A similar process occurred for the 15<sup>th</sup> Amendment which gave Blacks the right to vote. Oregon did not ratify the 15<sup>th</sup> until 1959. Alana Semuels, *The Racist History of Portland, the Whitest City in America*, THE ATL. (July 22, 2016), <https://www.theatlantic.com/business/archive/2016/07/racist-history-portland/492035/>.

Black Oregonians faced new challenges in the 1920's when Oregon became a "Klan state

. . . a southern state transplanted to the North" in which the Klu Klux Klan rose to immense political and social power.<sup>18</sup> The Oregon Klan originated in Medford, Oregon but quickly spread throughout the state.<sup>19</sup> At the time, Oregon's population was over 95% White and mainly Protestant, making the state fertile ground for the Klan's westward expansion.<sup>20</sup> However, given that Oregon's exclusionary law were so successful in maintaining a virtually non-existent Black population—the census reported there were only 2,144 "Negros" living in Oregon in 1920, a mere 0.27% of the state's population—the Klan mainly targeted Catholics and Jews as opposed to Black Oregonians.<sup>21</sup>

While the Klan's reign in Oregon was astonishing, it was ultimately short-lived.<sup>22</sup> Despite recruiting over 40,000 Oregonians in just three years (about 9.6% of Oregon's White, male population in 1920), the KKK all but disappeared from Oregon by the 1930's.<sup>23</sup> Rationales for its demise include the Klan's loss of influence over local newspapers, public outrage over isolated incidents of violence, poor leadership, and intergroup fighting.<sup>24</sup> Yet no one posits that the Klan's racism and extremism led to its decline in Oregon;<sup>25</sup> clearly, these core principals were valued by Oregon's White majority

### C. The Modern Era

Against this historical backdrop, it's unsurprising that the evolution of White Supremacy in Oregon led to criminal laws that disproportionately criminalized Black Oregonians. "Black criminalization" refers to the theory that crime policy, rather than crime itself, leads to the incarceration of

18 MCLAGEN *supra* note 9, at 129; Thompson, *supra* note 8, at 365.

19 MCLAGEN *supra* note 9, at 9.

20 Ben Bruce, *The Rise and Fall of the Ku Klux Klan in Oregon During the 1920s*, 11 VOCES NOVAE 1, 1 (2019) (noting that the Klan's desire to expand westward was motivated by the fact that Jim Crow segregation in the South had proven so successful in achieving the KKK's goals). Catholics made up around 8% of Oregon's population in 1920. Jeff LaLande, *Beneath the Hooded Robe: Newspapermen, Local Politics, and the Klu Klux Klan in Jackson County, Oregon 1921-1923*, PAC. NW. Q. VOL 83, No. 2, 42, 46 (1992).

21 Darrell Millner, *Blacks in Oregon*, PDXSCHOLAR: BLACK STUD. FAC. PUBL'NS AND PRESENTATIONS, 1, 5 (2021); U.S. BUREAU OF THE CENSUS LIBR., OREGON COMPOSITION AND CHARACTERISTICS OF THE POPULATION (1920).

22 Bruce, *supra* note 19, at 8.

23 *Id.* There were 416,334 White males in Oregon in 1920. U.S. BUREAU OF THE CENSUS LIBR., OREGON COMPOSITION AND CHARACTERISTICS OF THE POPULATION (1920).

24 Bruce, *supra* note 19, at 8.

25 *Id.*

Black Americans at a much higher rate than White Americans.<sup>26</sup> The use of Blackness as a proxy for crime serves to support views of Black inferiority.<sup>27</sup> By viewing crime as a “racial problem,” Whites have built a framework that allows them to ignore their own contribution to the criminalization of Blackness, and instead put the blame entirely on Black culture.<sup>28</sup> The modern US would not exist without Black criminalization, as it has provided a huge source of free or low-cost labor after the abolition of slavery.<sup>29</sup> Additionally, most of the efforts to enact criminal reforms in the past were extended only to Whites and not Black Americans.<sup>30</sup>

For instance, in 1934, Oregon amended its constitution to allow for nonunanimous jury verdicts in felony criminal cases.<sup>31</sup> The amendment was a direct reaction to increased xenophobia and racial tensions and, in particular, the public outrage when a Jewish man was freed after a single juror refused to find him guilty of murdering a Protestant man.<sup>32</sup> Politicians touted the amendment as a way to prevent the epidemic of Southern lynching from spreading to Oregon, but the law’s inevitable consequence was to permit unjust criminal convictions for minority groups.<sup>33</sup>

The constitutionality of this law was challenged in 1972 in *Apodaca v. Oregon* and the U.S. Supreme Court upheld it, ruling that the Sixth Amendment did not mandate unanimous jury trials.<sup>34</sup> As noted, nonunanimous crim-

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26 Khalil Gibran Muhammad, *Where Did All the White Criminals Go?: Reconfiguring Race and Crime on the Road to Mass Incarceration*, SOULS 72, 73 (2011) [hereinafter Muhammad, *Reconfiguring Race*].

27 KHALIL GIBRAN MUHAMMAD, *THE CONDEMNATION OF BLACKNESS* 205 (Harvard University Press paperback ed. 4th prtg. 2011) [hereinafter MUHAMMED, *CONDEMNATION OF BLACKNESS*].

28 *Id.*

29 *Id.* at 272.

30 Muhammad, *Reconfiguring Race supra* note 25, at 78.

31 ALIZA B. KAPLAN & AMY SAACK, *OVERTURNING APODACCA V. OREGON SHOULD BE EASY: NONUNANIMOUS JURY VERDICTS IN CRIMINAL CASES UNDERMINE THE CREDIBILITY OF OUR JUSTICE SYSTEM*, 95 OR. L. REV. 1, 2 (2016).

32 *Id.*

33 *See id.* at 5. In other words, the state chose to step in and commit de facto lynchings to prevent the Whites from taking actions into their own hands. *See id.*

34 *Apodaca v. Oregon*, 406 U.S. 404, 411 (1972) (holding that the Sixth Amendment itself does not require proof beyond a reasonable doubt in criminal cases because the concept of “beyond a reasonable doubt” did not take shape until after the Constitution was adopted). Relevantly, the Supreme Court held that unanimity is not a precondition for assembling a jury that represents a cross-section of the community. *Id.* at 413. More specifically, defendants had no right to a jury that represented every distinct voice in their community nor a jury that had a member of their own race. *Id.* The Supreme Court explicitly stated that “[n]o group, in short, has the right to block convictions.” *Id.* This reasoning

inal jury trials exacerbated racial inequities by preventing “minority” jurors from challenging the implicit biases of criminal prosecution or giving voice to their dissent.<sup>35</sup> Indeed, in a state that has historically excluded Blacks, both legally and culturally, nonunanimous jury verdicts perpetuates racial stereotypes about the criminality of Black Americans and contributes to the disparate make-up of Oregon’s prison population.

Oregon’s nonunanimous jury rule still remains a part of Oregon’s constitution.<sup>36</sup> In April 2020, the U.S. Supreme Court overturned *Apodaca in Ramos v. Louisiana*, holding that the 14th Amendment does, in fact, guarantee the Sixth Amendment’s right to a unanimous jury conviction in state criminal cases.<sup>37</sup> Even though Oregon will now review of thousands of nonunanimous convictions, little can be done to remedy the nearly 40% of state felony convictions that resulted from nonunanimous verdicts.<sup>38</sup>

It is no surprise that the anti-Black racism within Oregon’s criminal system has led to outstanding racial disparities within the carceral state. Today, Black Oregonians comprise only 2% of the total state population but account for 9% of the prison population.<sup>39</sup> Specifically, the imprisonment rate for White Oregonians was 366 for every 100,000, while the rate for Black Oregonians was 2,061 for every 100,000.<sup>40</sup> Put another way, Blacks are incarcerated 5.5 times more than Whites.<sup>41</sup> The historical context discussed above illustrates just a few state-specific policies that have led to this disparity in

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played into the precise racist assumptions that Oregon had for amending its constitution in the first place, namely that people of color would infect juries as “unreasonable jurors” who would intentionally cause mistrials in order to exonerate people of the same race and make the twelve person jury “unwieldy and unsatisfactory.” *See id.* In other words, Black jurors posed a threat to the easy and liberal conviction of Black defendants.

35 KAPLAN, *SUPRA* NOTE 30, AT 33 (NOTING THAT RESEARCH SHOWS THAT “JURORS SYMPATHIZE WITH ‘SIMILAR’ DEFENDANTS WHILE UNCONSCIOUSLY REINFORCING SOCIAL STEREOTYPES AGAINST ‘DIFFERENT’ DEFENDANTS.”).

36 OR. CONST. Art. I, § 11.

37 *Ramos v. Louisiana*, 140 S.Ct. 1390, 1397 (2020).

38 Len Reed, *Responding to Ramos: Focus in Oregon Shifts to Reviewing Cases and Addressing Implicit Bias Among Jurors*, 81 NOV. OR. STATE BAR BULL. 18, at 2. Further, Oregon requires that misdemeanors require the unanimous verdict of a six person jury. Therefore, life sentences may be handed out on a nonunanimous verdict, but crimes where the maximum sentence is only one year have to be unanimous. OR. REV. STAT. § 136.210(2) (2015); Kaplan, *supra* note 30, at 19.

39 *Incarceration Trends in Oregon*, VERA INST. OF JUST., <https://www.vera.org/downloads/pdfdownloads/state-incarceration-trends-oregon.pdf> (last visited Nov. 30, 2021).

40 *State-by-State Data*, SENT’G PROJECT, <https://www.sentencingproject.org/the-facts/#map> (last visited Nov. 30, 2021).

41 *See id.*

criminalization. The next part of this paper will explore the reform bills that passed in Oregon's 2021 legislative session and the different approaches the bills use to address Black Criminalization.

## PART II: RACIAL RECKONING AND CRIMINAL LAW REFORM

Despite Oregon's history of White supremacy, Portland became a hub for mass protests demanding radical racial justice reform in 2020. In the wake of these demonstrations, the Oregon legislature undertook extensive reforms in three broad areas, each of which is addressed below.

### *A. The Impetus: Portland Protests Make International News*

On May 28, 2020, protests began in downtown Portland following the murder of George Floyd by Minneapolis police.<sup>42</sup> Months later, as protests calmed in other major cities, they persisted nightly in Portland.<sup>43</sup> In July 2020, protests became even more heated when demonstrators were injured by federal agents that had been dispatched by President Trump.<sup>44</sup> In the wake of this unrest, Oregon lawmakers vowed to enact racial and criminal law reforms during the 2021 legislative session and delivered 28 separate bills doing so.<sup>45</sup> As explained below, these reforms generally fall into three categories based on their approach for effecting change.<sup>46</sup>

The first 18 bills introduced during Oregon's 2021 legislative session address police reform and police victimization of Black Oregonians. These laws target the recruitment, conduct, and punishment of law enforcement of-

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42 JAYARI RAMAKRISHNAN, *PROTESTERS TAKE TO PORTLAND STREETS FOLLOWING MINNEAPOLIS POLICE KILLING OF GEORGE FLOYD*, THE OREGONIAN, (MAY 28, 2020, 10:54 PM), [HTTPS://WWW.OREGONLIVE.COM/NEWS/2020/05/PROTESTERS-TAKE-TO-PORTLAND-STREETS-FOLLOWING-MINNEAPOLIS-POLICE-KILLING-OF-GEORGE-FLOYD.HTML](https://www.oregonlive.com/news/2020/05/protesters-take-to-portland-streets-following-minneapolis-police-killing-of-george-floyd.html).

43 *Id.*

44 Robert L. Taylor, *Confidential Settlement Communication Under FRE 408 Re: United States v. City of Portland, 3:12-cv-02265-SI Risk Mgmt. No. G2012-0493-01 BC*, PORTLAND.GOV (May 7, 2021), <https://www.portlandoregon.gov/pcep/article/783538>.

45 Hillary Borrud, *Oregon Legislature concludes session marked by huge spending, racial justice reforms*, THE OREGONIAN, (June 27, 2021, 6:15 AM), <https://www.oregonlive.com/politics/2021/06/oregon-legislature-concludes-session-marked-by-huge-spending-racial-justice-reforms.html>; News Release, Danny Moran, Communications Director, Office of the House of the Speaker, Critical Policing and Criminal Justice Reforms Cross Finish Line (June 26, 2021), <https://www.oregonlegislature.gov/kotek/Documents/2021%20Session%20-%20Criminal%20Justice%20and%20Police%20Reform.pdf>.

46 All 28 bills are listed and categorized along with the names of the chief sponsors and the votes each received in Appendix A. See Paul Butler, *The System Is Working the Way it Is Supposed to: The Limits of Criminal Justice Reform*, 104 GEO. L.J. 1419, 1420 (2016); Muhammad, *Reconfiguring Race*, *supra* note 25, at 78.

ficers as a direct means to encourage equality and reduce the disparate representation of minorities within the carceral system.<sup>47</sup> This category draws from Professor Paul Butler's four articulations of inequities in criminal law and Professor Khalil Gibran Muhammed's formulation of successful reforms in criminal law in the early 20th century.

The other two categories involve front- and back-end measures to prevent contact with the criminal system and reduce recidivism, respectively. For example, six bills introduced in Oregon's legislative session are what I classify as "downstream harm reduction" measures, which encourage the rehabilitation of those who've already come into contact with the criminal system.<sup>48</sup> Meanwhile, five bills are classified as "upstream prevention" measures, which seek to prevent interactions with the criminal system in the first place.<sup>49</sup>

### *B. Police Reform Bills*

Police reform bills represented the largest category passed by the Oregon legislature in 2021. These reforms generally fall under Professor Butler's Third Articulation of inequity in criminal law, "police-community relations."<sup>50</sup> This articulation posits that racial inequities in the criminal system occur when police treat people of color differently from Whites.<sup>51</sup> Under this articulation, weeding out the "bad apples"—meaning the individual racist officers—will result in greater racial equity in policing.<sup>52</sup> Professor Muhammed similarly explains that although White Americans have long benefited from being portrayed as the victims of unfair social stratification, Blacks have not been afforded similar sympathies.<sup>53</sup> In this way, police reform bills would provide legal recourse for Black victims of police violence and discrimination, implicitly recognizing that Blacks are victims of the criminal "justice" system.<sup>54</sup>

The problem with police reform bills that aim to eliminate bad actors is that they ignore larger systems of oppression that allow and promote racial discrimination in the first place.<sup>55</sup> For example, critical race theory suggests that racial disparities in the criminal system are actually the result of legal

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47 Appendix A.

48 *Id.*

49 *Id.*

50 Butler, *supra* note 45, at 1432.

51 *Id.* at 1433–34.

52 *Id.* at 1434.

53 Muhammad, *Reconfiguring Race*, *supra* note 25, at 74.

54 *See id.*

55 *See* Butler, *supra* note 45, at 1445–46.



police conduct, as opposed to illegal misconduct.<sup>56</sup> In other words, it is not the “bad apples” who cause oppression and violence as much as it is the legal rights to discriminate, which has been authorized by the U.S. Supreme Court of the United States over time.<sup>57</sup>

Oregon’s 18 police reform bills aimed to filter out “bad apples” as early as the hiring process through bills such as HB 2936, which requires background checks and the use of standardized checklists and questionnaires for prospective police officers.<sup>58</sup> Other bills seek to achieve procedural justice and eliminate discrimination that occurs when police interact with citizens.<sup>59</sup> For example, SB 418 prohibits police from using false information during interrogations with minors.<sup>60</sup>

Other police reform bills use pattern and practice approaches to help ensure accountability and uncover repeated instances of police misconduct that, in turn, permit legal recourse.<sup>61</sup> For example, HB 2932 requires departments to participate in National Use-of-Force Data Collection operated by the FBI and empowers the Oregon Criminal Justice Commission to analyze these statistics and report annually to the legislature.<sup>62</sup>

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56 *Id.* at 1446.

57 *Id.* at 1454–57 (discussing the various “superpowers” that Supreme Court criminal procedure jurisprudence has granted to police. Such as the “super power to kill” granted by the *Scott v. Harris* holding which allowed police to use deadly force to enforce a traffic law).

58 H.B. 2936, 81st Leg. Assemb., Reg. Sess. (Or. 2021). Senator Manning Jr. noted, “Unfortunately, we keep learning about some officers’ ties to hate groups. We’ve seen examples of bigoted speech on the internet and social media by law enforcement officers as well. Hate groups and hate speech are never acceptable, and it blocks Oregonians of color from feeling as though they can count on our men and women in uniform to protect them equally. We need to get ahead of allowing these individuals to join law enforcement and have officers who are truly interested in protecting and serving all people.” Press Release, Oregon Senate Democrats, Oregon Senate Passes Suite of Bills to Improve Public Safety and Police Accountability (June 4, 2021), <https://www.oregonlegislature.gov/senatedemocrats/Documents/PRESS%20RELEASE%20Oregon%20Senate%20Passes%20Suite%20of%20Bills%20to%20Improve%20Public%20Safety%20and%20Police%20Accountability.pdf>

59 Butler, *supra* note 45, at 1433–34.

60 S.B. 418, 81st Leg. Assemb., Reg. Sess. (Or. 2021). Oregon and Illinois are the only two states with laws that prohibit police from using deceptive interrogation techniques on children. Innocence Staff, *Oregon Deception Bill Signed into Law, Banning Police from Lying to Youth During Interrogations*, INNOCENCE PROJECT (July 14, 2021), <https://innocenceproject.org/deception-bill-passes-oregon-legislature-banning-police-from-lying-to-youth-during-interrogations/>.

61 Butler, *supra* note 45, at 1458.

62 H.B. 2932, 81st Leg. Assemb., Reg. Sess. (Or. 2021).

Passage of the above police reforms was largely spearheaded by members of the Oregon legislature, especially the BIPOC Caucus.<sup>63</sup> Senator Lew Frederick (D-Portland) sponsored seven of the 18 bills<sup>64</sup> and Representative Janelle Bynum (D-Happy Valley), the only African American female legislator in Oregon at the time, sponsored ten and led a bipartisan effort to obtain their passage.<sup>65</sup>

Despite these legislative successes, civil rights advocates have criticized the Oregon legislature for not going further in their police reform efforts, such as revoking qualified immunity.<sup>66</sup> For example, several major community organizations in Oregon did not actively support of the police reform bills.<sup>67</sup> One such reason may be that, in accordance with critical race theory, legislative reform is incapable of creating meaningful social change, since the law itself is not “a neutral force of change,” but a mechanism through which White supremacy is perpetuated.<sup>68</sup> Likewise, the civil rights community has a legitimate concern that slow and incremental reform leads to backlash, as occurred on a national level post-Reconstruction and post-Civil Rights era.<sup>69</sup> For these and other reasons, many racial justice advocates focused their efforts on downstream harm reduction and upstream prevention bills as opposed to police reform during the 2021 legislative session.

### *C. Downstream Harm Reduction Bills*

The second category of criminal law reforms introduced in 2021 sought to alleviate the downstream burdens that result from an individual's past or

63 See Press Release, Oregon Senate Democrats, Oregon Senate Passes Suite of Bills to Improve Public Safety and Police Accountability (June 4, 2021), <https://www.oregonlegislature.gov/senatedemocrats/Documents/PRESS%20RELEASE%20Oregon%20Senate%20Passes%20Suite%20of%20Bills%20to%20Improve%20Public%20Safety%20and%20Police%20Accountability.pdf>.

64 Appendix A.

65 *Id.* SEE ALSO MAXINE BERNSTEIN, *OREGON HOUSE PASSES PACKAGE OF POLICE ACCOUNTABILITY MEASURES*, THE OREGONIAN (APR. 26, 2021, 7:50PM), [HTTPS://WWW.OREGONLIVE.COM/POLITICS/2021/04/OREGON-HOUSE-PASSES-PACKAGE-OF-POLICE-ACCOUNTABILITY-MEASURES.HTML](https://www.oregonlive.com/politics/2021/04/oregon-house-passes-package-of-police-accountability-measures.html).

66 Jonathon Levinson, *Oregon Lawmakers OK police accountability measures, but face calls for bigger change*, OR. PUB. BROAD. (Apr. 27, 2021, 6:00 AM), <https://www.opb.org/article/2021/04/27/oregon-lawmakers-ok-police-accountability-measures/>.

67 See e.g., *Legislative Recap: A Historic Legislative Session for Racial Justice*, COAL. CMTYS. COLOR (June 28, 2021), <https://www.coalitioncommunitiescolor.org/cc-news/2021-legislative-recap>.

68 Margaret Davies, *Legal Theory and Law Reform: Some Mainstream and Critical Approaches*, 28 ALT. L.J. 168, 170 (2003).

69 Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1335 (1988).

current involvement with the criminal system. These measures include expungements, alternative release programs for persons in custody, sentencing reconsideration, and relieving individuals from the collateral consequences of a criminal conviction (such as restoring voting rights, social welfare, and access to housing).<sup>70</sup>

As formulated by Professor Muhammad, downstream harm reduction laws strive to rehabilitate individuals and help them successfully reintegrate into their community.<sup>71</sup> For example, SB 819 permits the district attorney and an incarcerated person to jointly petition for sentencing modification or reduction.<sup>72</sup> Likewise, SB 620 aims to repeal mandatory supervision fees so that people on supervision, such as parole or probation, can achieve financial stability for themselves and their families as opposed to these onerous fees.<sup>73</sup>

Unlike the police reform measures discussed above, downstream harm reduction bills were heavily backed by Oregon community organizations and social justice advocacy groups.<sup>74</sup> This was typically because such groups recognize that downstream efforts are vitally important for people who are already entangled in the criminal system.<sup>75</sup> For instance, The Partnership for Safety and Justice lobbied for SB 620, relating to abolishing supervision fees, argued that the bill would reduce recidivism through increased economic opportunities for formerly incarcerated individuals.<sup>76</sup> It also framed the bill as a way to increase public safety by freeing up community corrections officers to focus on higher priorities than collecting such fees.<sup>77</sup> Another group, Sponsors, Inc., which is a nonprofit assisting individuals with reentry after release from prison, posited that SB 620 would emphasize the rehabilitative nature of our criminal system, as opposed to its punitive nature.<sup>78</sup> Sponsors, Inc.

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70 Bridget McCormack, *Let's Move Criminal Justice Reforms Upstream: A Perspective from the Bench*, 74 SMU L. REV. 575, 578 (2021).

71 Muhammad, *Reconfiguring Race*, *supra* note 25, at 79.

72 S.B. 819, 81st Leg. Assemb., Reg. Sess. (Or. 2021).

73 S.B. 620, 81st Leg. Assemb., Reg. Sess. (Or. 2021); *Legislative Recap: A Historic Legislative Session for Racial Justice*, COAL. CMTYS. COLOR (June 28, 2021), <https://www.coalitioncommunitiescolor.org/cc-news/2021-legislative-recap>.

74 See Appendix A; *Promoting Success of Supervision*, P'SHIP FOR SAFETY & JUST., <https://safetyandjustice.org/wp-content/uploads/SB620A-Overview-v0621c.pdf> (last visited Nov. 18, 2021) (listing Latino Network, Sponsors Justice Reimagined, ACLU of Oregon, Central City Concern, Coalition of Communities of Color, Disability Rights Oregon, ImagineBlack, Bridges to Change, and more as advocates in support of SB 620).

75 McCormack, *supra* note 69, at 591.

76 *Promoting Success of Supervision*, P'SHIP FOR SAFETY & JUST., <https://safetyandjustice.org/wp-content/uploads/SB620A-Overview-v0621c.pdf> (last visited Nov. 18, 2021).

77 *Id.*

78 Letter from Paul Solomon, Executive Director of Sponsors, Inc. to the House

also touted the bill as reducing crime, increasing productivity, and promoting effective law enforcement.<sup>79</sup> In other words, the bill would help turn incarcerated people into “law-abiding, hardworking, and tax-paying citizens.”<sup>80</sup>

Although downstream harm reduction bills undoubtedly benefit people already involved with the criminal system—who are disproportionately people of color—they do little to actually address the root problems of racial disparity in the criminal system.<sup>81</sup> For example, expungement is beneficial for people who have already entered the criminal system because it helps alleviate the burdens that often follow from conviction; such as difficulties finding job, securing housing, and taking out student loans.<sup>82</sup> However, expungements do not address the root causes of racial disparity in the criminal system that have resulted in Black Americans being arrested and incarcerated at significantly higher rates than White Americans.<sup>83</sup> This is where upstream prevention bills attempt to address the legacy of anti-Blackness.

#### D. Upstream Prevention Bills

The final category of reform bills introduced during Oregon's 2021 legislative session aimed to prevent interaction with the criminal system in the first instance, through decriminalization and structural reform. By addressing the root causes of inequity in the criminal system, such measures prevent the inevitable consequences stemming from arrest, conviction, and incarceration.<sup>84</sup> For example, SB 236 banned suspensions and expulsions from state-funded early learning programs, which was one measure to disrupt the

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Rules Comm., Support for SB 620 (June 18, 2021), <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/PublicTestimonyDocument/32070>; *About Sponsors*, SPONSORS JUST. REIMAGINED, <https://sponsorsinc.org/about-sponsors/>.

79 *See id.*

80 *See About Sponsors*, SPONSORS JUST. REIMAGINED, <https://sponsorsinc.org/about-sponsors/> (last visited Nov. 19, 2021). Corrections Officer organizations and the Oregon Department of Corrections supported SB 620. Unlike advocacy groups, Corrections Officers focused on the fact that SB 620's waiver of supervisory fees was not mandatory, so that counties can still impose fees when they need to collect revenue. *See* Letter from Jeremiah Stromberg, Or. Dep't. of Corr. to the Senate Comm. on Judiciary and Ballot Measure 110 Implementation, Re: Senate Bill 620 (Feb. 18, 2021), <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/PublicTestimonyDocument/4688>; *see also* OACCD Executive Board Members, Or. Ass'n. of Cmty. Corr. Dirs. to Or. Senate, OACCD Supports Senate Bill 620, <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/PublicTestimonyDocument/4669> (last visited Nov. 19, 2021).

81 *See* McCormack, *supra* note 69, at 576.

82 *Id.* at 577.

83 John Tyler Clemons, *Blind Injustice: The Supreme Court, Implicit Bias, and the Racial Disparity in the Criminal Justice System*, 51 AM. CRIM. L. REV. 689, 690–91 (2014).

84 McCormack, *supra* note 69, at 576.

school-to-prison pipeline.<sup>85</sup>

Another example is SJR 10, an anti-slavery constitutional amendment, which would eliminate slavery as a punishment in the Oregon Constitution.<sup>86</sup> A modern example of slavery can be seen in prison work programs, where inmates—who are primarily people of color—work for nominal to no wages at the behest of a private, corporate prison.<sup>87</sup> SJR 10 was sponsored by Senator James Manning Jr. (D-Eugene), Senator Frederick, and Representative Bynum and widely supported by racial justice advocacy groups.<sup>88</sup> Organizations including Oregonians Against Slavery and Involuntary Servitude (OASIS) and the non-profit law firm, Oregon Justice Resource Center, lobbied hard for the resolution as a way for Oregon to begin dismantling the racist and slavery-based roots of incarceration.<sup>89</sup>

Bills like SJR 10 fall under Professor Butler’s fourth articulation of inequity in criminal law, known as “Anti-Black Racism” or “White Supremacy.”<sup>90</sup> This articulation posits that police practices and the disproportionate imprisonment of Black Americans are the result of structural racism and White supremacy, as opposed to individual racist actions.<sup>91</sup> This articulation embraces critical race theory and a “historicized” view of social relationships between groups.<sup>92</sup>

Oregon also passed a decriminalization bill, HB 3059, which abolished the requirement that law enforcement arrest people who are unlawfully assembled.<sup>93</sup> The ACLU of Oregon argued that the amendment would rid the Oregon criminal code of a “toothless vestige” of an era in which people of color were frequently arrested without probable cause for exercising their First Amendment rights.<sup>94</sup> The amendment was a direct response to the arrests that occurred in Portland during the 2020 protests, seeking to expand the

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85 S.B. 236, 81st Leg. Assemb. Reg. Sess. (Or. 2021); Press Release, Oregon House Democrats, House Votes to Ban Suspensions and Expulsions from Early Childhood Programs (June 22, 2021), <https://www.oregonlegislature.gov/housedemocrats/Documents/PRESS%20RELEASE%20House%20Votes%20to%20Ban%20Suspensions%20and%20Expulsions%20from%20Early%20Childhood%20Programs.pdf>.

86 S.J.R. 10, 81st Leg. Assemb. Reg. Sess. (Or. 2021).

87 MUHAMMED, CONDEMNATION OF BLACKNESS, *supra* note 26, at 272.

88 *Id.*

89 *Oregon legislators vote to eliminate punishment exception to constitution*, OASIS PRISON COAL. (Aug. 18, 2021), <https://oasisprisoncoalition.org/ojrc-press-release/>.

90 Butler, *supra* note 45, at 1434–35.

91 *Id.*

92 *Id.* at 1443.

93 H.B. 3059, 81st Leg. Assemb. Reg. Sess. (Or. 2021).

94 ACLU of Oregon, *Proposal to Repeal ORS 131.675, Oregon’s Unlawful Assembly Statute*, 2 (July 23, 2020).

privilege of decriminalization to non-Whites who organized and participated in those protests—an encouraging step towards equity in decriminalization, historically reserved only for Whites.<sup>95</sup>

### *E. Summary*

Although Oregon's 28 separate reforms sought justice through different approaches, each was a huge achievement in the battle towards racial equality. And while the Oregon legislature readily took credit for passing the bills, none of these measures would have passed without the long-term efforts of racial justice advocates in Oregon.<sup>96</sup> The next part of this paper analyzes the successes of these differing reform strategies and recommends how other states can implement these strategies to achieve similar legislative reforms.

## **PART III: ANALYSIS AND RECOMMENDATIONS**

Reforming criminal law at the state level is important because most incarcerated people in the United States are policed and prosecuted by the State and reside in state and county facilities.<sup>97</sup> For this reason, the criminal reform bills passed in Oregon (despite the state's history of anti-Blackness) provide a blueprint for of successful strategies and legislation for other states may use in seeking to enact broad reform in criminal law.

### *A. Mass Demonstrations*

The first strategy that contributed to Oregon's success was a willingness to take advantage of a critical moment of national reckoning. Oregon legislators seized the national momentum towards reform in the wake of George Floyd's murder—displayed through mass demonstrations—to pass many of the aforementioned police reform laws that they had proposed for many years.<sup>98</sup>

For example, Senator Lew Frederick sponsored 59 bills related to police

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95 Muhammad, *Reconfiguring Race*, *supra* note 25, at 71, 88.

96 See News Release, Danny Moran, Communications Director, Office of the House of the Speaker, Critical Policing and Criminal Justice Reforms Cross Finish Line (June 26, 2021), <https://www.oregonlegislature.gov/kotek/Documents/2021%20Session%20%20Criminal%20Justice%20and%20Police%20Reform.pdf>.

97 Lauren-Brook Eisen, *Criminal Justice Reform at the State Level*, BRENNAN CTR. FOR JUST. (Jan. 2, 2020), <https://www.brennancenter.org/our-work/research-reports/criminal-justice-reform-state-level>.

98 See Molly Harbarger & Hillary Borrud, *Police accountability, long ignored by Oregon lawmakers, poised to become law as White leaders finally see black colleagues' urgency*, THE OREGONIAN (Jun. 23, 2020), <https://www.oregonlive.com/politics/2020/06/police-accountability-long-ignored-by-oregon-lawmakers-poised-to-become-law-as-white-leaders-finally-see-black-colleagues-urgency.html>.

reform and accountability since he was elected in 2010.<sup>99</sup> Prior to the 2020 protests, most of Fredrick's bills were met with disinterest and allowed to die in committee; this was despite Frederick's repeated personal stories of police bias that he encountered as a Black Oregonian.<sup>100</sup> In the summer of 2020, however, the Oregon legislature took interest in police reform, which Frederick recognized: "[sometimes] it takes a national incident for people to see this is not just something Lew's making up."<sup>101</sup> Not only did White state legislators have access to a disturbing video of police violence against George Floyd, a Black man, but they were also faced with months of relentless protests and unrest in the state's most populous city.<sup>102</sup>

This is not the first time that the visible violence against Black Oregonians encouraged White legislators to spur to action.<sup>103</sup> In 2018, Representative Janelle Bynum "seized a moment of wide awareness of what present-day racism looked like" after a constituent called the police on the Representative while she was out canvassing.<sup>104</sup> The incident was reported nationally and Bynum was able to pass a bill that punishes people for making racist 911 calls,<sup>105</sup> which she recognized would likely not have garnered so much support but for national attention.<sup>106</sup>

Activists also seized the critical moment in creating new projects pushing for decriminalization.<sup>107</sup> For instance, a collective of Black-led organizations launched "Reimagine Oregon" in the summer of 2020 with a two-year plan to begin dismantling systemic racism in the state.<sup>108</sup> Reimagine Oregon not only used the critical moment to spur a multifaceted political campaign, they also helped organize and participate in the protests themselves.<sup>109</sup> Specifically, Reimagine Oregon coordinated reoccurring meetings between legislators and Black community member, Black-led organizations, and protest organiz-

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99 *Id.*

100 *Id.*

101 *Id.*

102 *Id.*

103 *Id.*

104 *Id.*

105 *Id.*

106 *Id.*

107 Julie Sabatier, *How is Oregon doing with its efforts to dismantle systemic racism*, OR. PUB. BROAD. (May 27, 2021), <https://www.opb.org/article/2021/05/27/how-is-oregon-doing-with-its-efforts-to-dismantle-systemic-racism/>.

108 *The Reimagine Oregon Project, Born Out of 2020 Protests Against Racial Injustice, Releases Multi-Jurisdictional Plan to Begin Dismantling Systemic Racism in Oregon*, REIMAGINE OR. (July 28, 2020), <https://www.reimagineoregon.org/launch>.

109 *Id.*

ers to address policies that would improve the lives of Black Oregonians.<sup>110</sup> These policy proposals covered everything from education to healthcare and housing.<sup>111</sup> Leaders recognized that protests do, in fact, bring power and a political willingness to enact change.<sup>112</sup> After the 2020 protests, political leaders in Oregon actively engaged with community demands for racial justice; politicians engaged with organizers and pushed bills through the finish line.<sup>113</sup> Nkenge Harmon Johnson, President and CEO of the Urban League of Portland, noted that for the first time in over six years of work for the League, legislators started calling her for input on legislation, as opposed to the other way around.<sup>114</sup>

Because the state lacks a formal history of slavery and lynching, the continued struggles faced by Black Oregonians are often not at the forefront of White liberal thinking.<sup>115</sup> Many Oregonians are unaware of the state's past anti-Black policies, such as the failure to ratify the 14th Amendment and the not-too-distance Black exclusion laws.<sup>116</sup> Additionally, since Black Oregonians comprise such a small percentage of the state's population, White Oregonians can engage in "race-blindness" and ignore present realities of racial discrimination.<sup>117</sup> In other words, White Oregonians can pretend that racism is not a prominent issue because there are simply less Blacks Oregonians to experience racism.<sup>118</sup> The murder of George Floyd sparked outrage amongst Oregonians because, for many, it was the first time they had been saturated in such explicit racial violence.<sup>119</sup>

Oregon's willingness to take advantage of the national reckoning with racist police violence is a strategy that advocates can adopt in all states. Activists everywhere can and should organize and engage in community-based protests. Indeed, the most remarkable aspect of the 2020 Portland protests was how long they lasted despite the fact that the legislative session did not

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110 *Id.*

111 *Id.*

112 *Id.*

113 Sabatier, *supra* note 106.

114 *Id.*

115 *See* Brooks *supra* note 7, at 733–34.

116 *Id.* at 757–58 (noting that the eventual ratification of the 14th could have been a real moment of reckoning for Oregonians, but politicians and the media chose to bury the story rather than confront the significance of Oregon's belated ratification).

117 IAN F. HANEY LOPEZ, *WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE* 176–79 (1996).

118 *See id.*

119 The fact that it required graphic video and images of a Black man's murder to fuel motivations for change is worthy of further examination, but is outside the scope of this paper.



convene until 2021. Communities in other states should strive to create and build upon the strength of community-based social movements.

### *B. Representation in the Legislature*

A second strategy for success during Oregon's 2021 legislative session was to establish long-term representation in the state legislature. Oregon's 2021 BIPOC Caucus was the largest the state had ever seen with 12 members and it was able to advance bills in 10 different areas<sup>120</sup> and sponsor 20 of the 28 bills discussed above.<sup>121</sup> The BIPOC Caucus is also a useful example for how a state legislature can create spaces for non-White members to meet and develop policies together. Oregon's BIPOC caucus was developed just before the start of the 2021 session and has proven to be an effective way for non-White legislators to garner support and traction for their bills.<sup>122</sup> Building solidarity amongst non-White legislators and their communities helps leaders establish political capital that has been historically monopolized by their White political counterparts.

As part of this strategy, it is equally important to elect non-White political candidates. Specifically, advocates should seek non-White representatives with a background in community work that are willing to collaborate with advocacy organizations in developing progressive, racial justice policies. Several members of Oregon's BIPOC Caucus are former directors and executives from racial justice advocacy groups.<sup>123</sup> For example, Senator Kayse Jama was the former Executive Director of Unite Oregon; Representative Khanh Pham was the former Environmental Justice Manager for the Asian Pacific American Network of Oregon; Representative Andrea Valderrama was the former Advocacy Director of Coalition for Communities of Color; and Representative Tawna Sanchez was the Director of Family Services at the Native American Youth and Family Center.<sup>124</sup>

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120 Anthony Veliz, *BIPOC Caucus Legislative Agenda*, OR. LATINX LEADERSHIP NETWORK (May 26, 2021),

[HTTPS://WWW.OLLN.ORG/NEWS/BIPOC-CAUCUS-LEGISLATIVE-AGENDA](https://www.olln.org/news/bipoc-caucus-legislative-agenda).

121 Appendix A (illustrating that several of the bills that were not sponsored by BIPOC members were bills recommended from groups and organizations such as Lewis and Clark Law School and the Innocence Project).

122 *SEE BIPOC CAUCUS UPDATE*, OR. STATE LEG. (MAY 20, 2021), <https://www.oregonlegislature.gov/bynum/Documents/BIPOC%20Caucus%20Update%20May%202021.pdf>.

123 *Legislative Recap*, *supra* note 84.

124 *Id.*; *Representative Tawna D. Sanchez*, OR. STATE LEG., <https://www.oregonlegislature.gov/sanchez/Pages/biography.aspx> (last visited Nov. 23, 2021).

Representation in the legislature is important because, throughout its history, Oregon continuously refused to recognize Black residents as full citizens.<sup>125</sup> Even though Black exclusion laws were largely unenforceable, the fact that they remained on books for decades indicates the legislature's complete indifference to its Black constituents. Similar to how a mostly White community can refuse to recognize racial realities because they effect such a small portion of the community, a White legislature can ignore the pleas of racial minorities and still claim it is representing the interests of the majority. But even though Oregon's non-White population remains relatively small, this fact should not preclude or discourage non-White legislators from running for office.

It is clear from Oregon's 2021 legislative session that the collective action of non-White legislators can have a major impact on passing reform bills with support that crosses racial and geographic lines. Other state legislatures can engage in similar practices to ensure that non-White legislators have the space and resources to develop policies that reflect the interests of their communities. Electing non-White legislators in every state is vital to provide representation for historically marginalized communities.

### *C. Moderate Police Reform is Possible with Bipartisan Support*

A final strategy for reform is seeking bipartisan support. Here, too, Oregon's 2021 legislature proved that police reform is possible with support across the aisle. Overwhelmingly, the police reform bills were products of the Oregon legislature's BIPOC Caucus and other senate democrats,<sup>126</sup> but Representative Bynum, who led the BIPOC Caucus, intentionally spearheaded a bipartisan effort in order to get those bills passed.<sup>127</sup>

For example, Bynum worked closely with Republican Representative Ron Noble, a former police chief, who co-sponsored 10 of the 18 police reform bills.<sup>128</sup> The goal of these reform bills was to improve professionalism and build trust between citizens and officers.<sup>129</sup> Noble even framed the bills

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125 See e.g., Brooks, *supra* note 7, at 744 (discussing the refusal to ratify the 14th amendment as a way to keep anti-miscegenation laws in place and maintain the inferior status of Black Oregonians).

126 See Press Release, Or. Senate Democrats, Oregon Senate Passes Suite of Bills to Improve Public Safety and Police Accountability (June 4, 2021), <https://www.oregonlegislature.gov/senatedemocrats/Documents/PRESS%20RELEASE%20Oregon%20Senate%20Passes%20Suite%20of%20Bills%20to%20Improve%20Public%20Safety%20and%20Police%20Accountability.pdf>; Butler, *supra* note 55, at 1433–34.

127 Bernstein, *supra* note 64; Appendix A.

128 Bernstein, *supra* note 64; Appendix A.

129 Bernstein, *supra* note 64.

as a means to increase a sense of safety for police officers when interacting with their community.<sup>130</sup>

Passing moderate reform is much more attainable when legislation is framed as a bipartisan issue.<sup>131</sup> Bipartisan support overcomes the barrier of political polarization that causes conservatives to vehemently oppose any bill seen as part of the “liberal agenda.”<sup>132</sup> One notable means to such support is to focus on directions for the future instead of assigning blame for the past.<sup>133</sup> Representatives Bynum and Noble employed this strategy by emphasizing the aspects of their reform bills that appealed to conservative values such as public safety, law enforcement safety, and professionalism of government actors.<sup>134</sup> Noble’s former career as a law enforcement officer also helped make the laws attractive to police organizations and lobbyists who saw him as a champion of their interests.<sup>135</sup>

While such legislation admittedly does not address the root causes of racial disparities in the criminal system, they nonetheless serve an important function in putting in place necessary restrictions on police conduct. Bipartisan work can also increase constituents’ support across the political spectrum and use police and other law enforcement organizations as conduits for change. Key Democrats can partner with key Republicans to develop police reform bills that are more likely to pass both the House and Senate and not spark backlash.

Other state legislatures can harness bipartisan support to pass moderate police reform bills. Bipartisan support will be necessary to pass such legisla-

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130 *Id.* (quoting Representative Noble, “Community policing -- when an officer feels safe to engage with the public, to walk a beat, to drive a car and to engage in communication -- in many areas in our state that doesn’t happen anymore,” Noble said. “I’m hoping this package of police reform bills will encourage that to happen.”).

131 It should be noted that both Democrats lead both Oregon’s House and Senate by a large majority. Even so, many of the 2021 police reform bills passed the House with near unanimity. Appendix A.

132 *See e.g.* Lee De-Wit, et. al., *What Are the Solutions to Political Polarization*, GREATER GOOD MAG. (July 2, 2019), [https://greatergood.berkeley.edu/article/item/what\\_are\\_the\\_solutions\\_to\\_political\\_polarization](https://greatergood.berkeley.edu/article/item/what_are_the_solutions_to_political_polarization) (discussing how people often prefer policies proposed by members of their own in-group).

133 Susan N. Herman, *Getting There: On Strategies for Implementing Criminal Justice Reform*, 23 BERKELEY J. CRIM. L. 32, 37 (2018).

134 *See* Peter Wong, *Oregon legislative panel starts hearing policing bills*, PORTLAND TRIB. (Jan. 29, 2021),

[HTTPS://PAMPLINMEDIA.COM/PT/9-NEWS/496274-397980-OREGON-LEGISLATIVE-PANEL-STARTS-HEARING-POLICING-BILLS](https://pamplinmedia.com/pt/9-news/496274-397980-oregon-legislative-panel-starts-hearing-policing-bills).

135 *See id.*

tion in states with Republican majorities. These efforts will not only make passing police reform more politically feasible, but it will also protect such bills from repeal upon election of new legislatures.

## **CONCLUSION**

The Oregon 2021 legislative session proves how a variety of criminal reform bills including police reform, downstream relief, and upstream prevention can be replicated elsewhere through strategic advocacy. Oregon's willingness to embrace a critical moment of mass demonstrations, increasing representation in the legislature and creating a foundation of representation within the legislature committed to long-term representation on reform, and employing strategies to making criminal law reform a bipartisan issue were essential to the successful passage of criminal reform bills during its 2021 legislative session—despite the state's anti-Black history.

Other states can implement one or all of these strategies in seeking to reform their criminal codes. However, is no one-size-fits-all approach; strategies will naturally have to vary based on each state's historical context, existing laws, and current political climate. Rather, Oregon is an example of how a predominately White, historically anti-Black state can enact substantive change to redress deeply-ingrained racial disparities. In this way, Oregon is a laboratory for new and innovative reforms to criminal law with the potential for long-lasting effect.