

## Implicit Racial Bias

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### Introduction

Implicit racial bias and its potential effects on criminal justice decision making have become highly visible issues in recent years. Driven by a myriad of factors, including the well-documented disparity in criminal justice involvement across racial groups and several high-profile events that have exposed rifts in the relationships between local police and the communities they serve, both discourse and research on the topic of implicit bias arguably has become more prominent than ever before. This fact sheet is intended to raise awareness about the concept of implicit racial bias, the effect of implicit racial bias in the criminal justice system, and how the issue is being addressed to enhance the fair and equitable administration of justice.

Although implicit bias can manifest itself in many different forms, such as gender, racial or religious bias, this fact sheet is focused specifically on implicit racial bias in the context of the criminal justice system. Indeed “all human beings have biases or prejudices as a result of their experiences, and these biases influence how they might react when dealing with unfamiliar people or situations” (President’s Task Force on 21st Century Policing, 2015). Implicit bias, however, occurs in the unconscious state of mind, meaning that individuals are not even aware that they have it (President’s Task Force on 21st Century Policing, 2015). Automatic associations and stereotypes about certain groups of people “can influence behavior, making people respond in biased ways even when they are not explicitly prejudiced” (National Initiative for Building Community Trust and Justice, 2015). Implicit racial bias fundamentally differs from explicit racial bias. While the latter typically manifests as overt racism or discrimination, implicit bias occurs unconsciously, typically without discriminatory intent. “Well-meaning people who con-

sciously reject racism or other bias may unwittingly act in ways that result in discrimination because of implicit bias” (Police Executive Research Forum, 2016).

The following gives a brief overview of implicit racial bias as it relates to the various stages of the criminal justice system. Various mechanisms used to address implicit racial bias are also briefly discussed along with what is known about their effectiveness.

### What is Implicit Racial Bias

It is important to distinguish implicit racial bias from racism or discrimination. Implicit biases are associations made by individuals in the unconscious state of mind. This means that the individual is likely not aware of the biased association.

Implicit racial bias can cause individuals to unknowingly act in discriminatory ways. This does not mean that the individual is overtly racist, but rather that their perceptions have been shaped by experiences and these perceptions potentially result in biased thoughts or actions.

No one is immune from having unconscious thoughts and associations, but becoming aware of implicit racial bias creates an avenue for addressing the issue.

### Implicit Racial Bias in the Criminal Justice System

Public confidence in the criminal justice system is a cornerstone of the rule of law and a facilitator of public safety. Research has clearly demonstrated “that people obey the law not just because they are afraid of

being punished or because they believe the law is morally right, but also because they believe that the law and its enforcement are fairly administered” (National Research Council, 2014). When the public perceives the criminal justice system to be fair and equitable, they are more likely to engage and cooperate with authorities when crimes are committed, which in turn leads to safer communities.

Given the well-documented over-representation of people of color in the criminal justice system — particularly behind bars — there has been a growing concern among policymakers, scholars and the public about what leads to such disparities and what can be done to reverse them. Similar concerns have emerged in recent years about the underlying causes of frayed relationships in some communities between the police and the citizens they serve. While many factors likely contribute to these problems, and there is no single solution for addressing them, research has clearly demonstrated “the adverse experiences and outcomes related to criminal justice involvement for marginalized groups,” and that “these adverse experiences can be the result of (1) unconscious discrimination; and/or (2) historic policies and related structural dynamics” (Staats, Capatosto, Tenney, & Mamo, 2017). Hence, attempts to better understand and mitigate the impacts of implicit racial bias are key to building confidence in the criminal justice system across all communities and ensuring that the administration of justice is perceived as fair and equitable for all.

Indeed, implicit racial bias and its impact on the administration of justice are being examined and discussed with greater frequency and in a far more substantive fashion than ever before. Implicit racial bias has been studied at various stages of the criminal justice process, and the potential effects of implicit racial biases on police officers, (Center for Policing Equity, 2016; Spencer, Charbonneau & Glaser, 2016; Fryer, 2016; Correll, Park, Judd & Wittenbrink, 2007). prosecutors, (Smith & Levinson, 2012). public defenders, (Richardson & Goff, 2013) trial judges, (Rachlinski, Johnson, Wistrich & Guthrie, 2009) the courtroom in general, (Kang & Lane, 2010 & Kang et al., 2012) the U.S. Supreme Court, (Clemons, 2014) and capital punishment decisions (Eberhardt, Davies, Purdie-Vaughns & Johnson, 2006) have all been examined in recent years. Findings from this research have demonstrated that

racial disparities are found at virtually every point of criminal justice processing, and that implicit racial bias can manifest itself not only in the discretionary decision making of criminal justice system actors — such as law enforcement officers, prosecutors, public defenders, judges, probation, parole and correctional officers, but also in otherwise well-intentioned crime control laws and policies.

Racial disparities, for example, have been found at the initial point of contact with police, particularly in practices such as the “stop and frisk”, which give law enforcement officers broad discretion about who to stop and who to take into custody (The Sentencing Project, 2016). Implicit racial bias also has become a central feature of discourse concerning tensions between the police and citizens in some communities.

Implicit bias is in fact being acknowledged in recent national police reform efforts. For example, in its 2015 final report, the Task Force on 21st Century Policing<sup>1</sup> noted that decades of research and practice support the premise that people are more likely to obey the law when they believe that the authority of those who are enforcing it is legitimate – and that the public confers legitimacy only on those they believe are acting in procedurally just ways. The report also noted that procedural justice focuses in part on the ways police officers and other legal authorities interact with the public and how the characteristics of those interactions shape the public’s trust of the police. Moreover, “external procedural justice” (i.e., the practice of fair and impartial policing), the report argues, is built on understanding and acknowledging human biases, (President’s Task Force on 21st Century Policing, 2015) both explicit and implicit. Witnesses testifying at the task force sessions directly addressed the need for a change in the culture in which police do their work, including the implicit biases that may lead officers to rely upon race in the context of stop and frisk. The Task Force concluded that to help achieve legitimacy, mitigating implicit bias should be a part of training at all levels of a law enforcement organization to increase awareness and ensure respectful encounters both inside the organization and with communities (President’s Task Force on 21st Century Policing, 2015).

Racial disparities also have been documented at the prosecution stage of criminal processing, Prosecutors

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<sup>1</sup> The Task Force on 21st Century Policing was established by Executive Order of the President on December 18, 2014.