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# Why Use “Criminal Legal System” Instead of “Criminal Justice System?”

## A Closer Look at the Evolving Language of Law

APPR Research Brief, August 2022

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Language matters. It is now common to hear the term “criminal legal system” used instead of “criminal justice system” as a way of highlighting that this system often does not adequately deliver justice for all, particularly for low-income individuals and people of color. This Research Brief summarizes the evolution of this shift as well as that of other language used to describe people affected by this system. It includes an overview of the developing terminology in legal and judicial discourse, working definitions, and reflections from multiple perspectives on language and phraseology within justice.

### Evolving Language in Legal & Judicial Discourse

Conscious efforts to rethink the language and terminology used to identify people who have been arrested, incarcerated, and supervised by local, state, and federal authorities have accelerated over the past two decades. In his Open Letter to Our Friends on the Question of Language, Eddie Ellis<sup>1</sup>—the founder of the [Center for NuLeadership on Human Justice and Healing](#) who was also previously incarcerated—asked others to “simply refer to us as PEOPLE. People currently or formerly incarcerated, PEOPLE on parole, PEOPLE recently released from prison, PEOPLE in prison, PEOPLE with criminal convictions, but PEOPLE.” [People First](#), an initiative led by FWD.us, also rejects the use of terms like “felon,” “inmate,” and “convict,” pointing to research that shows that these terms can further bias the public. Instead, they advocate for terms like “people accused of crimes” or “people convicted of felonies”—**phrases that place one's humanity before one's status in a system.**

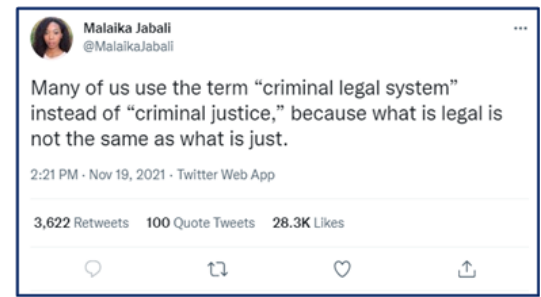
In an analysis of eight newspapers and wire services, Elderbroom, Rose, and Towns<sup>2</sup> determined that major national media outlets like *The New York Times* and *The Chicago Tribune* used terms like “inmate” 15 times more than “person/people in jail/prison” and that state and local stories distributed by the Associated Press routinely used terms like “convict” and “felon.” In total, Elderbroom et al. found 10,000 articles published that used the terms “felon,” “inmate,” “offender,” and “convict,” and 480 that used people-first terminology. The study also found that the use of negative-association terms made readers more likely to support punitive measures (such as longer sentences for people with prior convictions) and oppose justice reforms (such as treatment services instead of prison for people convicted of addiction-related crimes), demonstrating that **the way media outlets speak about these issues influences public opinion.**

Attention to potentially harmful language has spurred progress by media outlets, institutions, and organizations. FWD.us also found that the use of the word “convict” decreased 74% from 2000 to 2020; use of the term “offender” decreased 30% over the same time. Many leading research institutes have announced policy changes to produce only research that uses “people-first” terminology.<sup>3,4</sup> In 2016, President Barack Obama directed the Office of Justice Programs in the U.S. Department of Justice to cease using terms like “offender” and “felon,” a move rescinded by the Trump administration but adopted in local jurisdictions like Washington State, as well as in Los Angeles County under District Attorney George Gascon.

“Terms like convict, defendant, and inmate are all inherently dehumanizing language that rob people in the criminal system and incarcerated people of their personhood.”—  
**Olayemi Olurin, Public Defender at The Legal Aid Society in New York City**

It is with this lens that **people are questioning whether it is appropriate to refer to the “criminal justice system” as such, with some adopting the phrase “criminal legal system” instead.** As noted by Malaika Jabali, Senior News and Politics Editor at Essence magazine, that which is legal is not necessarily just. It can be challenging to perceive justice in a system that disproportionately arrests Black and other people of color for nonviolent charges like marijuana possession<sup>5</sup> while investors profit from cannabis on the New York Stock Exchange<sup>6</sup>; that places undue monetary stipulations on release for those who have not yet been convicted of crimes<sup>7</sup>; and that assigns individuals labels that strip away their humanity.<sup>8</sup> This questioning can be particularly salient for those who have been harmed by the system—people like the Exonerated 5, the Black and Brown teenage boys from New York City who spent years in prison after being falsely accused of raping a white woman in Central Park; the family of George Floyd, whose life was choked out of him by the knee of a police officer; or the Black and Brown people stopped, arrested, and detained at greater rates than their white peers in jurisdictions across the country.

**As clear examples of injustice become more publicized, researchers, practitioners, community advocates, and people with direct experiences being processed by this system are moving toward more intentional language in describing it.** “I don’t say ‘criminal justice system,’” notes Olayemi Olurin, a public defender for The Legal Aid Society in New York City. “It’s a deliberate misnomer meant to convince people that a criminal system—that is concerned only with punishment and upholding white supremacy—is synonymous with justice.” The injustices in the system, Olurin says, are not mistakes, but rather “the routine results of a punitive and morally bankrupt legal system” (author communication with Olayemi Olurin via Twitter Direct Messages, November 1, 2021).



[When They See Us](#) is a Netflix miniseries directed by Ava DuVernay depicting the story of [the Exonerated 5](#).

## Defining Terms: Criminal Legal System vs. Criminal Justice System

The processes in a society by which people who are suspected of committing crimes are arrested, charged, judged, acquitted or sentenced, and incarcerated or supervised in the community have historically been referred to as the “criminal justice system.” Legal scholar Sara Mayeux<sup>9</sup> writes that the use of the terms **“criminal justice” and the “criminal justice system” when referring to the police, courts, jails, and prisons is “so ubiquitous that . . . almost no one thinks to question the phrase.”** Justice—the process of using laws to fairly adjudicate people accused of crimes—is a key piece of the phrase. Leading institutions involving courts and corrections lean into the idea of justice as the central purpose of their work. The mission statement for the [U.S. Department of Justice](#), for example, includes ensuring the “fair and impartial administration of justice for all Americans.” “Equal Justice Under Law” is inscribed over the main entrance of [the United States Supreme Court](#). The role of a prosecutor, determined by [Berger v. United States, 295 U.S. 78, 88 \(1935\)](#), “is not that *it shall win a case, but that justice shall be done*” [emphasis added].

Yet many advocates and scholars have raised serious concerns about whether this system delivers justice to all who encounter it. Reformers cite excessive policing in communities of color,<sup>10</sup> including the killing of Black civilians by law enforcement officers<sup>11, 12</sup>; discretionary policies for pretrial detention and the use of money bail<sup>13</sup>; and massive racial and socioeconomic disparities in sentencing to jail and prison<sup>14-16</sup> to argue that justice within the system is more aspirational than reality, particularly for low-income individuals and people of color. Renowned civil rights scholar Michelle Alexander<sup>17</sup> identifies American incarceration as a system functioning to “ensure the subordinate status of a group defined largely by race”—a “racial caste system” akin to Jim Crow. Alec Karakatsanis chooses purposefully in his book *Usual Cruelty: The Complicity of Lawyers in the Criminal Injustice System*<sup>18</sup> not to use the term “criminal justice system” because, in his view, it is a system intentionally designed to disparately affect marginalized people.

Selected Merriam-Webster Definitions of Key Terms	
Justice	The maintenance or administration of what is <a href="#">just</a> especially by the impartial adjustment of conflicting claims or the assignment of merited rewards or punishments; the quality of being just, impartial, or fair; conformity to truth, fact, or reason.
Law	A binding custom or practice of a community...; a rule of construction or procedure; the whole body of laws relating to one subject; the legal profession.
Legal	Of or relating to law; deriving authority from or founded on law; conforming to or permitted by law or established rules; recognized or made effective by a court of law.

Source: [merriam-webster.com](https://www.merriam-webster.com)

Drawing on arguments such as these, **a growing number of scholars, advocates, and practitioners have adopted the phrase “criminal legal system” when referencing the courts and its actors, policing, community safety, and the rights of victims and of the accused.** In an appearance on MSNBC’s *Cross Connection*, Brittany Packnett Cunningham, then a member of President Obama’s Task Force on 21<sup>st</sup> Century Policing, explained,

*“[People need to] understand the system as the ‘criminal legal system,’ as many in the social justice community have pushed us to say for a long time.... This is a criminal legal system that analyzes the law in a particular case and is influenced by a whole host of biases. It is not a justice system.... If someone is already dead, if someone is already maimed, if someone is already harmed, justice then cannot occur.... This is merely a criminal legal system when... multiple Black men [falsely convicted of crimes] have been exonerated, some posthumously... and spent time languishing in jail when it is far too late to be made right.”*

“These are the times language really matters. You cannot confer justice from a system after someone is already harmed. The injustice has already taken place; everything else is accountability.”

—**Brittany Packnett Cunningham**

*Member of former President Obama’s Task Force on 21<sup>st</sup> Century Policing*

## Opposition and Debate

While many are calling for a paradigm shift in the language used to talk about justice, some disagree. As a North Carolina police officer observed, terms like “convict,” “felon,” and “offender” are ineradicable for many who work in the system because of years of practice and procedure (author communication with a police officer, speaking on condition of anonymity, on November 6, 2021). Others view the change as unnecessary political correctness. “The words ‘convict’ and ‘felon’ are not disparaging,” then-Congresswoman Diane Black said in response to the Obama administration’s directive to cease using those terms. “In fact, they are quite generous compared to some of the phrases we could accurately ascribe to certain criminals in the DOJ’s custody.”<sup>19</sup> Reflecting on President Obama’s directive to use people-first language, John Bickley,<sup>20</sup> the editor-in-chief at the *Daily Wire*, wrote with some incredulity: “Not only is it now calling young criminals ‘justice-involved youth’ (seriously), it’s now banning the terms ‘felon,’ ‘convict,’ and ‘offender’ because they are ‘disparaging labels.’ Their replacements: ‘person who committed a crime’ and ‘individual who was incarcerated.’” Using different words to describe people accused of committing crimes, some contend, does not mitigate—and even potentially minimizes—experiences of victimization. Responding to a *Raleigh News & Observer* journalist’s inquiry about evolving language, Chris Weaver wrote, “To fret over ‘harming the feelings’ of a fractional population that made poor choices that landed them in jail by using real-world terms to denote them is insanity.”<sup>21</sup>

Changes in language also can feel dismissive to people who work in the system and who consider the enactment of justice to be central to their mission. A 16-year veteran of a Michigan police department believes the call for new language is “frivolous and unnecessary” (author communication with a police officer, speaking on condition of anonymity, on November 18, 2021). Citing the difficult and often dangerous nature of work as a law enforcement officer, he states that he and his fellow officers have enough policies, rules, and regulations to remember that are more important than labels they provide the accused: “Honestly, [police officers] don’t have time to devote to learning new language choices just because someone is offended by it.” In his view, people ought to focus on other issues—like concerning increases in crimes like homicides, or a perceived lack of support by the broader public for law enforcement officers—over semantics.

## Conclusions and Further Reading

The debate around switching from “criminal justice system” to “criminal legal system” is not unlike the discourses that occurred as other linguistic changes were made to the way we characterize people of certain racial and ethnic groups, people living in under-resourced communities, and people who identify with a gender that differs from the one assigned at birth. As awareness about the etiology of such language and attention to how people felt when referred to with such terms increased, many terms were ultimately deemed to be offensive and no longer appropriate. In all of these instances, the language we use has evolved along with our understanding and empathy.

The same consideration should be given to the language used to describe an entire system that has undergone many changes in policy, practice, and perception since its inception. Activists and thought leaders have argued for years that describing a system rife with racial and socioeconomic disparities as one that provides “justice for all” is inaccurate and damaging. Like the demand for various policy reforms, the call for language that better accounts for the experiences of people processed and punished by this system continues to grow louder. The phrase “criminal legal system” is far from universal at this point, and thus individuals must decide for themselves what language they will use. Understanding the logic behind the introduction of this term and how using it signifies a commitment to reducing disparities and improving outcomes for all people can inform that choice.

*The [Racial and Community Justice Committee \(RCJC\)](#) is an internal committee of RTI International researchers who work on APPR. The RCJC was established to ensure that RTI maintains a focus on racial equity and community engagement across all our work on APPR and to help ensure that APPR’s study of pretrial change is grounded in a commitment to equity and informed by people directly affected by pretrial systems. For questions about this brief, please contact Megan Comfort at [mcomfort@rti.org](mailto:mcomfort@rti.org) or (510) 665 8275.*

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