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**Racial Disparities in Sentencing: Implications  
for the Criminal Justice System and the  
African American Community**

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**ABSTRACT**

*This paper analyzes the consequences of discriminatory sentencing on the African American community. The intent is to review factors that contribute to the over-representation of African Americans in the prison system and to analyze the way that the judicial system maintains these disparate numbers through practices and procedures, racial profiling, historical biases and quasi legal procedures sanctioned by the mainstream process under the guise of law and order. Review of the literature, extensive meta- analysis and statistics confirms and support the statistics presented and the finding provided. The results of these harsh and disparate sentencing are resulting in the weakening and destruction of the already fragile African American community. Without a complete overhaul of the judicial system and sensitizing of the decision-makers in the legal and political community, these negative impacts will continue to have adverse effect on a large number of Americans who would otherwise become productive citizens. The conclusion presents remedies and alternatives to the disparate sentencing and incarceration practices perpetrated on members of the African American population.*

## **INTRODUCTION**

This paper discusses racial disparities in sentencing and its adverse effect on the African American community. Racial disparity in sentencing, historical representation of current biases, plea bargaining and racial profiling are all factors contributing to the current overrepresentation of minorities in the judicial system, further threatening the African American community and weakening the family. Aggregate data and statistics compiled supports the assumption that African Americans are disproportionately subjected to conditions such as racial profiling, traffic stops leading to searches and seizures yielding minor offenses that lead to incarceration, rather than probation or rehabilitation. Further, they are given much longer, disparate prison sentencing than white offenders under similar circumstances. These systematic disparate treatments contribute to a dysfunctional community and lead to the socio economic destruction of the African American family infrastructure. In conclusion, suggestions are made to arrest this debilitating situation.

### **Review of Literature on Racial Disparities in Sentencing**

Albonetti (1991) examined unexplained sentencing differences as well as race and gender differences in the length of sentences. Albonetti's study found that minority status alone accounted for an additional sentence length of "one to seven months." African American defendants were "likely to receive pretrial release but were more likely to be convicted, and be given harsher sentences after conviction than white defendants charged with the same crimes." She further asserts that the only explanation for these differences is racial prejudice.

According to Dye (2004) swiftness, severity and certainty are all deterrence to criminal activities. However, Pauline Brennan (2006) introduces the issue of race and ethnicity in the sentencing process. Her work scrutinizes another dimension of the judicial system and explores the possibility that race and ethnicity are more central to the sentencing phase than even the crime itself.

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Spohn (2000) concluded after reviewing 32 studies on sentencing and ethnicity, that race and ethnicity played a part in sentencing. Specifically, she maintains that African American and Hispanic offenders were more likely than whites to be sentenced to prison, especially if they were male, young and unemployed. Further, race and ethnicity were more pronounced when the offences were less serious. The minority person, in this case male, will be put in a position where there is a prior record and an imprisonment. This prior record will be strong evidence sustained and utilized for even future harsher sentencing. When African American males by their prior conviction and harsher sentencing are perceived as recidivist, their white counterparts who may have received community service for the same crime will be perceived as rehabilitated.

African American and Hispanic women face the same faith. African American and Hispanic women are perceived as less likely to exhibit stereotypically feminine behavior - e.g. dependence, chastity). (Gilkes 1983, Fishman 1998, Rome 1998 in Brennan 2006) These stereotypes held for minority women produce harsher sentences. Bontranger, Bales and Chiricos (1995), explain this phenomenon from the perspective of perceived threat. African American males are particularly vulnerable as the white community links the African American to threat, and this threat is placed both in the social as well as individual levels.

Blumstein (1982) assessed disproportional imprisonment by comparing aggregate uniform Crime Report (UCR) arrest statistics and imprisonment by race and found that 80% of racial disproportionality appeared to be explained by the disparities in involvement in crime by minorities.

Crutchfield 1994 study showed considerable variations in patterns of imprisonment. While racial disproportion appeared to be primarily explained by the disproportion in imprisonment, for example, arrest rate and differences in rate become apparent. In his observation, while 90% of racial disproportionality in prisons nationwide may be attributed to disproportional minority involvement, only about 60% of the imprisonment disparity in the state of

Maryland was explained by differences in the rates of arrest for whites and nonwhites based on 1982 data.

But, according to Sampson & Lauritsen, (1997) there is some evidence to suggest that in certain context, race influences several incarceration decisions in such a way that African American defendants are more likely than their white counterparts to receive a sentence of imprisonment. Other data point to the fact that even when race/ ethnicity does not appear to directly determine sentencing length, most of the time, the impact of race on incarceration decisions may be linked indirectly through mediating practices, such as pretrial release, work history and plea bargaining.

In another study, Tonry (1993) noted that although the implementation of structured sentencing schemes like presumptive sentencing guidelines appear to reduce unwarranted racial sentencing disparity as necessary, evidence of racial inequality in sentences under such practices still prevail. Relying on data from Washington, he observed that despite a reduction in racial disparity in sentencing, white defendants appeared to be more likely to benefit from the use of mitigating provisions such as first time-offender status. In contrast with Oregon, whites were slightly less likely than African Americans and other minorities defendants to receive upward dispositional departures; slightly more likely to receive downward dispositional departures and much more likely to benefit from alternative optional probation programs. Tonry concluded that the implementation of presumptive sentencing guidelines appeared to reduce sentencing disparity but only to a bare minimum, but not eliminate it entirely.

In a follow-up study, Tonry (1994) observes that although African Americans constitute 12% of the American population, their numbers in prison exceed those of the white community. Tonry notes that the problem of African American overrepresentation in the prison system is caused by swelling number of immigrants and underclass, most of whom reside in the Rust and Snow belts, and who have not been able to integrate into the main stream economy. Tonry's finding are consistent with that of Blumstein which shows that some and not all of African American overrepresentation in prison can be attributed to the

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disproportionate rate at which African Americans commit offenses.

Relying on 1980s data, Tonry stated that the federal war on drugs explained the extraordinary increase among non-white offenders sent to prison. Comparing racial incarceration rates among four countries: Australia, England, Wales and Canada, Tonry found that notwithstanding the fact that African American-white incarceration rates in England and Wales are slightly higher than that of the United States, there is no significant difference in the way they handle their minority groups compared to the United States. However, Tonry concluded that the war on drugs had generated so much racial disparities in sentencing that it has become a colossal mistake. Tonry suggests that adversity be recognized as a mitigating factor when making decisions about diversion into treatment and training programs; and that criminality within ethnic groups be viewed as a marker of social distress that will direct targeted social services and support.

Another similar study by Welch explored the effect of race on sentencing. Using statistical technique designed to adjust for “selection bias” and omit “variable bias,” Welch et al. (1985) explored the possibility of indirect effects of race on sentencing. His study focused primarily on how race affects pretrial release status and its overall impact on sentencing. The investigation also examined interaction effects, like how the effects of race on sentencing varies among the various racial defendants depending on mediating factors like whether an individual has a prior record or has used a weapon. The investigation suggested that African American defendants in some jurisdictions might be less likely to plead guilty, an action which might affect their incarceration decisions.

In a related study, Chirico & Crawford (1995), on the basis of their review of 38 other studies showed that African American defendants are significantly more disadvantaged than whites at the point of incarceration, especially in the southern communities where they comprise a larger percentage of the population and where unemployment is relatively high. However, they concluded that even though

race may have an indirect effect on incarceration decisions, it appeared not to be a determinant of sentencing length.

Miethe & Moore's (1985) "before and after" study of the implementation of Minnesota's guidelines revealed that despite the fact that the direct effects of social factors like gender, race, and marital status on complaint sentences diminished subsequent to the implementation of the guidelines, the effects of such factors on sentencing outcome was not only indirect, but also came through case processing characteristics; and that the effects of race on sentence outcome were mediated by factors such as the use of a weapon as well as prior record.

Similarly, Stolzenberg & D'Allesio (1994) relied on "time series" design to assess the presence of unwarranted disparity with regard to incarceration decisions and sentencing length decision from 1980 to 1989. Unwarranted disparity denotes sentence outcomes that did not arise from legally mandated factors. The results of the study indicated that although the guidelines initially reduced disparity in incarceration decisions, the reduction in disparity was not sustained on the long run. Therefore, in their opinion, the sentencing guidelines appeared to substantially reduce disparity in sentencing length throughout the period of their study.

Blumstein (1993) updated his 1983 study that suggested that the larger part of racial disproportionality in prison (about 80%) was as a result of differential arrests for serious crimes like robbery and murder which inevitably leads to imprisonment most of the time. In the study, the 1991 data showed that unexplained racial situation had worsened as it showed that only 76% of the disproportionality could be explained by differences in arrest figures. On the basis of data on other crimes other than drugs, he found that racial disparities actually substantially decreased, and that racial differences at arrest accounted for 94% of those imprisoned. What is new between the 1983 and the 1990s results, according to Blumstein is the saliency of drug offenders in prison. For example, in 1991, African Americans made up 585 of incarcerated drug offenders but only 40% of arrestees, a difference that compares well with the 1983 finding, except that the problem had gotten worse in the 1990s because the

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percentage of prisoners who were drug offenders had increased substantially.

Bridges et al. (1987) studied the impacts of crime, social structure and the criminal justice system on differences in incarceration rates between whites and nonwhites. They used levels of economic inequality between whites and nonwhites, levels of urbanization and the percentage of minority population to operationalize social structure. Likewise, they used data on county crime and arrest rates and work load of county courts to measure the effects of crime and the criminal justice system respectively. The researchers found that violent crime and arrest rates had limited influence on differences in the rates of imprisonment among the races. They also observed that increasing minority imprisonment rates corresponded with increasing minority population but no effect on the white rate.

In addition, they found that as urbanization increased, minority imprisonment rate increased as well, while the white rate actually declined slightly. In their opinion also, workload of county courts had no effect on racial disparity in sentencing. They also concluded that the correlation between minority increase in urban areas and their corresponding increase in incarceration rate may be explained by the new response techniques of law enforcement officials to a perceived threat that is driven by a heightened threat in the majority community that minorities' higher tendency to commit crime is a threat to community order.

In a subsequent study, Butler (1997) asserts that centuries of slavery, discrimination and segregation have created the social environments that fester and fuel high levels of African American criminal behavior. Citing crime data, Butler noted that with regards to drug enforcement in particular, African Americans comprise 13% of drug users but 74% of those incarcerated for drug offenses. He concluded that although conscious criminal intent to discriminate may not exist on the part of the criminal justice system, aggregate data suggest that justice administration is administered in a racially discriminatory



manner. He called for equity (equal distribution of burden) in the criminal justice system so that minority incarceration rate can be reduced to a bare minimum.

Kennedy (1994) criticizes studies that suggest that racial discrimination in the criminal justice system explains differences in incarceration levels between whites and African Americans. He asserts that Black on Black crime poses more threat to the African American community than racist police officers. He also observes that critics of racist law enforcement overlook the fact that African Americans receive less and inadequate amount of police protection compared with whites. Kennedy criticized the ruling in *State V. Russel*, a Minnesota Supreme Court case that struck down a state law punishing crack cocaine users more harshly than powder cocaine users on the ground that it legally discriminated against African Americans. Kennedy argues that the reasoning for upturning the case was ill-advised since the intent of the law was not to discriminate against African Americans. Although the consequences of the law appeared to place heavy burden on the criminal elements in the African American community, it nonetheless benefits the African American group that is law-abiding, he asserts. In the absence of any findings of discriminatory intent, the legislature and not the judiciary should be the more appropriate agency to remedy policies that have racially disparate impacts.

Cole (1995) offers a critique of Randall Kennedy's assertion that the criminal justice system does not discriminate against African Americans as a group/ class because high levels of African American incarceration protects and benefits the law-abiding sector of the African American community, while punishing the law-breaking segment. Cole argues that it is hard to buy Kennedy's argument because removing so many African American men from the community and stigmatizing them as criminals, in the name of good law enforcement breeds crime, single-parent households, less adult supervision of children, more crime and violence, as well as increased drug use. Hence, Cole concludes that the mere fact that African Americans are so disproportionately represented in the nation's prison system contributes to the stereotype that all young African American men are potential criminals, heightened sense of threat to community peace as well as influence informal police techniques in law enforcement,

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and increase the likelihood of the criminal justice system being administered in a racially-biased way.

Davis (1998) argues that prosecutors, more than any other actors in the criminal justice system should be held responsible for the occurrence of racial disparities in sentencing. Their powers to make charging as well as plea-bargain decisions, and control and exercise of prosecutorial discretion bring blame to their door steps. Davis also blames the judicial standards set in the land mark Supreme Court cases: *Armstrong V. United State*, *McCleskey V. Kemp*, and *Whren v. United States* for setting very high and unattainable standards to prove racial discrimination. Davis recommends the use of racial impact studies which rely on collected and published data on the race of defendants and victims for each category of offence and the actions taken in various stages of criminal justice custody and process. In the opinion of Davis, these steps would guarantee that prosecutors are held accountable whenever racial discrimination is detected. Davis concludes by reminding the public that the role of the prosecutor is not only to promote the incapacitation function of the penal system, but to make sure the overall justice system is administered in an equitable and fair manner.

Harer & Steffen Meier (1992) looked at the relationship between disparate measures of economic inequality and rates of violent crime among African Americans and whites. Their study measured within-race inequality (white-to-white and African American-to-African American inequality). In general, inequality is a poor determinant of high rates of African American crime, especially violence rates, but a powerful predictor of high crime rate among whites. This study appears to support earlier assertions that when measuring the economic well-being of African Americans visa- avis whites, African Americans as well as whites are unlikely to compare each other with the opposite race as a comparison group. However, the caution about the study is that it focused extensively on the direct effects of inequality on African American violence, since inequality may have indirect effects on African American violence based on its destabilizing impacts on the family and community.

Hawkins et al. (2000) in their investigation explored how community structures and cultures shape rates of criminal involvement. Family disruption can exacerbate unemployment, poverty and inequality, drive juvenile crime rates, more so in the African American than white community. Inequality, urbanization and class are reliable predictors of differential impacts on African Americans, and over time, variables such as residential neighborhood, racial and ethnic differences in rates of delinquency tend to disappear. Nevertheless, Hawkins and company suggest that more research is necessary to explore the impact of socio-cultural characteristics of urban communities on their abilities to regulate behavior. More attention should be paid to within-group differences as well as other related factors, such as levels of victimization, drug and alcohol use, weapons use, exposure levels to violence, and the relationship between offenders and victims.

Pope and Feyerherm (1993) examined the role minority status plays in the processing of juvenile offenders at various stages of the justice system - arrest, intake and detention. Their findings revealed mixed results. While about 33.3% of the studies reviewed found no evidence of racial disparity, the remaining 66.6% of the studies discovered that differential treatment occurred either at the system level or some of the processing stages, or that small racial differences were registered, and became more acute as minority juveniles preceded deeper into the penal system. Therefore, Pope and his partner posited several guidelines to direct future research, and assist governments and communities in monitoring and examining racial disparities and ways to address them. Some of the elements of the guidelines include reliance on disaggregate data that comprises multiple decision points in the processing stages, structural and community influences on the officials and offender environment, community background (rural or suburban) and family structure of juvenile offenders.

Spohn (2000) found strong evidence, especially at the federal level, of direct discrimination against minorities that result in significantly more severe sentences than whites. However, he fell short of stating emphatically that a consistent and widespread pattern of direct discrimination existence was primarily because several studies which he reviewed failed to establish any direct effects on sentencing

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severity, not to mention the emphasis of the studies on a relatively small number of jurisdictions. However, Spohn acknowledges the fact that minority offenders receive much harsher treatment and sentencing perhaps because of the general perception that they are dangerous. Minorities convicted of drug offenses, those unable to secure pretrial deals, and release, those with prior criminal records, those who refuse to plead guilty and those who victimize whites are more likely to receive harsher sentences. While suggesting the need for further studies focusing on the effects of pretrial decisions on sentencing and the expansion of focus groups to include other racial and ethnic groups, Spohn concludes that while sentencing reforms implemented since the 1970s have fallen short of their intended goal of reducing racial disparities in sentencing, racial discrimination still persists in the criminal justice system.

Butler (1995) blames the disproportionate disparity in African American representation in prison on the choice of incarceration as the sole remedy to social problems of African Americans: unemployment, single-parent households and limited male role models. He asserts that the African American community would be better served if non-violent offenders are not plucked from the community. Hence, Butler appeals to the African American jurors to consider the use of jury nullification to rewrite the wrongs perpetrated by the racially-biased criminal justice system to target African Americans. Jury nullification is a legal practice in which jurors ignore the facts of a case and instead vote solely in line with their conscience rather than the dictates of the law. He believes that juries while considering cases solely on their merits have a moral obligation and responsibility to acquit African American lawbreakers, especially in cases involving non-violent (victimless) crimes like drug use and drug possession. However, for nonviolent crimes such as theft, Butler appeals to juries not to lean toward nullification unconditionally, but to consider it as an option based on the circumstances of the case. He further reminds African American jurors to exercise the legal power of jury nullification which they actually possess, as the only power

at their disposal to overcome racial bias in the criminal justice enterprise.

Wacquant (2000) contends that the penal system is designed to exploit, control and marginalize African Americans; and that the history of slavery and Jim Crow laws attest to it. Wacquant also believes that the automation of industrial labor and the exportation of American jobs, and the suburbanization of employment have rendered ghetto residents superfluous to the economy. Thus, the prison has technically displaced the ghetto as the preeminent institution of social control and racial confinement. Furthermore, he asserts, that the ghetto now resembles the prison which consists of entirely the poor, minority and uneducated. While the prison system fails to rehabilitate inmates it has replaced the institutions of state control like welfare agencies, the police, and public housing, and is characterized by the culture of fear and distrust of authority as well as violence. Wacquant concludes that the explosion of African American imprisonment has legitimized the system's goal of criminalizing African American-ness, and depoliticized racial struggles to prison uprising and militancy; actions that marginalize African American political power through exclusion from voting and educational and economic opportunities like receiving public assistance as a result of felony conviction.

Zatz (2000) reviewed cases with emphasis on race, gender or class. Relying on the O.J. Simpson murder trial and the prosecution of crack mothers as a backdrop, Zatz discussed the importance of factoring in race, ethnicity, gender and class status in making criminal justice decisions affecting victims and offenders. The body of Zatz' study examined three main crime control policies - War on gangs, war on drugs and the transfer of juvenile offenders to adult courts; in order to show that the court decision processes can be compromised based on racial, gender or class considerations. Zatz concludes that courts processes and decisions, in fact, can be racialized, classed or gendered. He then challenged future researchers to try and make appropriate distinctions among race, culture, ethnicity, and gender, and to address measurement issues dealing with methods of coding race, ethnicity, gender and culture

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**THE NEW THREATS: PLEA BARGAIN AND WAR ON TERROR**

The African American community is faced with more and more of its young men failing in schools and less of them attending colleges and universities, and an over-representation of African American males and females in the Judicial System. The Department of Justice Bureau of Statistics (2004) shows that in 2004, there were 3,314 prisoners on death row of which 1,390 were African American and 74 were “other.” The 1,464 African Americans and other, accounts for 44% of the death row population. Further, of the 60 executions that took place in 2005, 19 were African American – accounting for 31.6% of the executions. (Capital Punishment 2004, November 2005, NCJ 211349 – US DOJ)

A further review of the U.S. Department of Justice Bureau of Justice Statistics NCJ 192929 shows that 592,462 persons were held in local-city and county jails. Of these, 347,600 were African American, Hispanic or other. The African American population alone, accounted for 244,000, (41.2%), whereas, the white population accounted for 41.3% of the population. The question is not whether African Americans have more propensities to perpetrate crime, but maybe the question should be how the judicial system is dispensing these cases when African American males and females are involved.

Plea agreement in these cases, as well as the type of representation and council received, are central to this high rate of incarceration. Human Rights Watch of 1997, in its report “Cruel and Usual,” states that “Many observers of the (United States) criminal justice system are concerned that the highly punitive mandatory sentencing law in effect coerce guilty pleas and threaten the continuing vitality of the constitutional right to force the state to prove its charges.” A further threat to African American males is the “war on terror,” where habeas corpus is expressly denied in the statute passed September 2006. (Tigar 2006) In addition to plea agreements, the media bias cannot be ignored when discussing the issue of African American

male disparate sentencing. How then, do we begin the discussion to salvage the African American community's family structure from the judicial perspective?

## **RACIAL PROFILING AND THE FOURTH AMENDMENT**

The fourth Amendment of the United States constitution guarantees the right of people to be secure in their persons, houses and effects against unreasonable search and seizure. However, the police have found a way to get around it, as the courts have given its meaning broad interpretations used at other times to deny citizens of their Fourth Amendment protections. . This scenario of abuse is even more frightening in the post September 11, 2001 law enforcement environment. Many court cases have chipped away on the protections afforded every American and especially minorities by the Fourth Amendment.

In the case of **Weeks V. United States (1914)**, the U.S. Supreme Court ruled that in order for the federal criminal courts to enforce the Fourth Amendment, all evidence obtained through illegal search by a federal agent in violation of the Fourth Amendment would have to be denied.

Also, in **Mapp V. Ohio (1961)**, the Supreme Court adopted the exclusionary rule, in which illegally seized evidence could not be used in court due to procedural error in evidence gathering, even though it could prove the guilt of the accused. This was interpreted to mean that police could not conduct a search on private property without a court order or warrant. Even in a public place, law enforcement agents could not arrest persons without a warrant, unless they have probable cause, in which the officer believes that a crime has been committed. Even in cases where an arrest without warrant or court permission has been made, police must present the accused before a magistrate to justify whether a probable cause even existed to warrant and justify the arrest. Under this rule, Police do not have a broad right to stop and frisk people on the street or in their automobiles to make random checks or searches.

In **Terry V. Ohio (1968)**, the Supreme Court established the principle that the Fourth Amendment did not prohibit the police or any other law enforcement agent from stopping a

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person for questioning as long as they have reasonable suspicion that the target or victim might be armed and therefore pose a danger, even when that suspicion does not equate the probable cause standard necessary for an arrest. Terry would prove to be one of the legal tools used by law enforcement agencies in defense of racial profiling practices.

Finally, in **Whren v. United States (1996)**, the Supreme Court decided that the temporary detention of motorists upon probable cause to believe that he has violated traffic laws does not violate the Fourth Amendment prohibition against unreasonable search and seizure, even if a reasonable law enforcement officer would not have stopped the motorist, absent some additional law enforcement objectives. In other words, a police officer who observes a minor traffic violation or offense like broken or burnt out tail light, cracked windshield, failure to signal when changing lane, driving too close to cars in front, worn out tires, loose seat belt, poor exhaust emission, absence of headlight under rain, may stop the driver even if a reasonable officer would not have been motivated to stop the car by desire to enforce the traffic laws. The officer may then ask the driver questions unrelated to the purported purpose of the stop, and may attempt to secure consent to search the car.

**IMPACTS OF RACE/ ETHNICITY ON POLICE  
STOPS, SEARCH, ARREST AND  
INCARCERATION**

According to a 2003 study by the Justice Policy Institute (JPI), which was commissioned by the Legislative Caucus of the state of Maryland, racial disparities do occur with respect to incarceration. For example, according to Maryland data, even though African Americans and whites use drugs at a comparable rate, they represent 68% of those arrested for drug offenses, and 90% of those incarcerated for drug offenses. This is a huge proportion of African American rate of arrest and incarceration, given the fact that African Americans constitute 28% of the population of the state. Nationally, in 2002, African Americans were incarcerated at seven times the rate of whites while the rate



for Latinos was 2.5%. Collectively, while Latinos and African Americans made up 25% of the U.S. population, they comprised 68% of all the prison population in 2002. On the bases of the 2002 arrest and imprisonment trends, the study predicted that one in seventeen white men (5.9%), one in six Latino men (17%), and one in three African American men (32%) born in 2001 would serve time in prison at least once within their lifetime. The justice Policy Institute study shed light on the socio-economic factors that drive arrest and incarceration. It showed that I out of 10 dropout white males (10%) and half of all African American male drop outs (50%) had prison records by the time they turn thirty, and that almost twice as many African American men (22%) in their thirties had prison records.

The Justice Policy Institute report showed that African Americans and other minorities are overrepresented in the State's imprisoned population compared to their overall numerical strength in the state population. For example, 28% of the population of the state of Maryland is African American. But they constitute 76% of the prison population. Furthermore, African American men are imprisoned at 8 times the rate of their white counterparts. Among women, African Americans are incarcerated at 4.2 times the rate for white women. 5.6% of African American men in Maryland are incarcerated, compared to less than 1% among white men. However, in the city of Baltimore, the picture appeared even dimmer, as 56% of African American male youth are under criminal justice control or supervision. Even, at a time when the prison population of the state of Maryland swelled from 7000 to 24,000 (tripled), African American ratio of all those incarcerated remained as high as 75%.

According to the Justice Policy Institute study, many factors were responsible for the overrepresentation of African Americans in the prison system:

1. Whites have better access to high quality treatment and Alternative (complimentary) social services which diverts them away from crime and imprisonment. This treatment gap exists between the races, as more African Americans than whites are left to fall by the wayside..
2. Overrepresentation in the corrections/ penal system keeps African Americans in perpetually worse condition than

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whites. Criminal records of crime, arrest and incarceration affects African Americans more negatively with respect to employment, access to higher education, capital formation, loan acquisition, and mortgage.

3. Whites are more likely to economically afford better legal representation and therefore enjoy more vigorous legal defense and advocacy. This legal element is more likely to keep whites out of prison compared to their African American or Hispanic counterparts.
4. Minorities are more likely to be arrested for certain behaviors than whites notwithstanding that both whites and African Americans commit crimes at equivalent rates: African American neighborhoods are often targeted more often for rug enforcement compared to their white counterparts. Therefore, their incident of arrest and conviction are ultimately higher. Under sentencing guidelines, once people have criminal history or record, they are less likely to escape imprisonment.

The premise that African Americans are more likely than whites to be stopped by law enforcement agents, searched, or arrested can be tested with data from the 2003 Annual report of Missouri Traffic Stops. Responding to citizens' complaints regarding racial profiling – "inappropriate use of race by law enforcement when making decisions to stop or arrest a motorist," In August 28, a law was enacted that required all law enforcement officers in the state to report specific information including a driver's race for each traffic stop made in the state. The state law enforcement agents are required under this statute to transmit the data to the State Attorney General for compilation. The punitive provision of the law was that the Governor would withhold funds for any agency that declined to comply. The presentation of the aggregate data, as compiled by the University of Missouri- St Louis researchers is as follows:

**Table 1. 2003 Statewide Summary of Result (Missouri Vehicle Stops)- 2003 Report of Missouri Motor Vehicle Traffic Stops-Missouri Department of Motor Vehicle**

<i>Key Indicators</i>	<i>Total</i>	<i>White</i>	<i>African American</i>	<i>Hispanic</i>	<i>Asian</i>	<i>Am. Indian</i>	<i>Other</i>
<b>Population</b>	4,331,937	3,692,696	444,024	80,094	50,593	17,951	46,579
<b>Stops</b>	1,360,814	1,12,121	190,264	26,403	11,033	1,152	8,841
<b>Searches</b>	105,821	77,584	23,667	3,626	363	137	44
<b>Arrests</b>	74,663	55,142	16,515	2,356	268	109	273
<b>Statewide Population %</b>	100%	85.24%	10.25%	1.85%	1.17%	0.41%	1.08%
<b>Disparity Index</b>	n/a	0.97	1.36	1.05	0.69	0.2	0.6
<b>Search Rate</b>	7.78%	6.91%	12.44%	13.73%	3.20%	11.89%	5.02%
<b>Contraband Hit Rate</b>	21.60%	23.19%	17.47%	14.62%	14.87%	24.09%	22.97%
<b>Arrest Rate</b>	5.49%	4.91%	8.68%	8.92%	2.43%	9.46%	3.09%

## DATA ANALYSIS

The analysis of the 2003 Missouri vehicle stops is very revealing. With respect to vehicle stops, 1,360,814 were registered statewide. Out of that, 1,123,121 were white, while 190,264 and 26,403 were of African Americans and Hispanics respectively. Asian and American Indians stopped were 11,033 and 1,152 respectively. The African American stop rate was high, compared to that of whites given the fact that African Americans make up 10.25% of the population, compared to whites who make up 85.25%. The figure was equally high for Hispanics and American Indians who constitute 1.85% and .45% of the state population respectively. With respect to searches, of 105,821, whites recorded 77,580, African Americans 23,667 and Hispanics 3,626. The African American rate of traffic searches was equally very high compared to its population strength in the state.

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One of the indexes used to measure racial profiling was the “*search rate*”, which included searches of property in the vehicle, the vehicle itself, the drivers, or other occupants of the vehicle. It can also be arrived at by dividing the number of searches by the number of stops, then multiply by 100. The search rate for all motorists was 7.78%. Out of that, 6.91% was the rate for whites, 12.44% for African Americans, 13.73% for Hispanics, 3.29 for Asians and 11.89 for American Indians. The search rate for African Americans and Hispanics was much higher than the national average (almost double). In comparing the search rate for different groups, it means that African Americans were 1.8 times more likely to be searched than whites (12.44/6.91). Hispanics were almost twice as likely as whites to be searched (13.73/6.91).

Looking at the *contraband hit rate*, another indicator (the % of searches in which contraband is found); contraband was detected in 21.6% of all searches initiated. However, the contraband hit rate for whites was 23.2% while 17.5% was for African Americans. Among Hispanics, the hit rate was 14.62%, Asians 14.87% and American Indians 24.09%.

Another device or instrument of measure relied on in this analysis was the “*arrest rate*.” The arrest rate for the general population was 5.49%. Of this number, whites had 4.91%, African Americans, 8.68%, Hispanics 8.92%, Asians, 2.43% and American Indians 9.46%. The arrest rates of 8.68 and 8.92% for African Americans and Hispanics far exceed the statewide average of 5.49% and almost doubled that of whites (4.91%).

The Missouri findings are in fact analogous to the Department of Law and Public Safety, State of New Jersey study of April 1999, entitled “New Jersey Attorney General issues a lengthy and controversial report on racial profiling by State Troopers.” The study examined statistics of stops, arrest and consent searches conducted by State police officers assigned to patrol the New Jersey Turnpike. The study found that 59.4% of stops involved whites, and that 27% involved African Americans (a little more than 25%).

For Hispanics it was 6.9% involvement, while Asian Americans recorded 2.8%.

Furthermore, the investigation found that even though a few stops led to the search of motor vehicles (0.7%), the overwhelming number of those searched (77.2%) were of ethnic minority groups (African American or Hispanic). In fact, 21% of white motorists were searched, while 53% (more than half) of those searched were African American and 24.1% Hispanic. With respect to arrests, 5.8% were persons of other races, 61.7% African American and 32.5% white. The study concluded that minority motorists were disproportionately subject to consent searches which relied extensively on instruction as decisions by a law enforcement officer to seek permission to initiate a search is based on officer discretion. In view of this dynamic, the study observed that incidental discrimination might arise because of stereotypes officers might have about minority motorists during routine traffic stops and apprehensions, thus subjecting the minority motorists more routinely to investigative tactics meant to result in contraband, weapons or illicit drugs arrests.

### **SYSTEMIC CAUSES OF DISPARATE TREATMENTS AND THEIR CONSEQUENCES ON RACIAL MINORITIES.**

Numerous studies have suggested or at best concluded that the criminal justice system's application of sentencing laws and guidelines has been discriminatory against minority individuals. In 1997, a study for the Maryland sentencing commission conducted by Charles Welford and Claire Souryal observed that while the gravity of an offense was supposed to determine the sentencing outcome for candidates, race appeared to be one of the main predictors of the harshness level of sentencing an individual gets. However, if the individual is African American or Hispanic with or without prior arrest or conviction record, he is more likely to receive harsher punishment than a white person

Another study conducted in 1997 by the John F. Kennedy School of Government, Harvard University, in conjunction with the National Bureau of Economic Research and the Department of Criminology, University of Maryland showed that racial differences in sentencing had more to do

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with judicial discretion than the sentencing guideline and gravity of the offense combined. The study concluded that prosecutors and judges make tougher sentencing decision for African American and Hispanic defendants than whites who comparatively often receive lesser sentences.

The consequences of the expansion and growth of prison system for drug crimes and other offenses has caused an overwhelming brunt of the war on crime and drugs to be borne by African Americans and Hispanics in comparison to whites. According to a report by the Substance Abuse and Mental Health Administration (SAMHSA), 2002 saw 8.5% of whites and 9.7% of African Americans abusing drugs in the preceding month. In the survey, 9.5% of African Americans and 9.3% of whites, virtually the same rate reported being substance dependent. With respect to youths aged 12 to 17, 10% of African Americans and 12.6% of whites also reported abusing drugs in preceding month.

Also, the Justice Policy Institute reported that on the national scale, 27% those sentenced are for drugs, compared to State of Maryland's 42% for drug offenses. In Maryland, drug offenders made up 24% of all those imprisoned in the state for drug offenses. This figure constituted a 5% rise in the prison population of the 1980s.

Moreover, in 1986, white and African American drug figures for drug offenses remained about the same. They were about 17% and 15% respectively, of all those sent to jail in the state of Maryland. Nevertheless, in 1999, nearly half (47%) of all African American prison sentencing were drug related, compared to 21% for white convicts. It is worthy to note that African Americans who make up 28% of the Maryland population, constituted 68% of all those arrested for drug possession, and then 90% of all those imprisoned for drug offenses statewide.

Furthermore, The Justice Policy Institute study revealed that from 1986 to 1999, African Americans who were incarcerated for drug use constituted 94% of the actual prison population growth in Maryland. African American prison rate for drug conviction per 100,000 also grew at 8

times the rate for whites during the same period. In 1999 alone, African American youths made up 93% of all juveniles imprisoned for drug offenses. But, from 1986 to 1999, African American youth made up the "new" juvenile population for drug offenses.

### **IMPACTS ON THE PENAL SYSTEM AND THE AFRICAN AMERICAN COMMUNITY**

One of the consequences of penal system, according to the Leadership Conference on Civil Rights may be attributed to its strategy of enforcement, racial profiling. Racial profiling operates on the assumption that minorities are generally criminals, a premise that impacts negatively on the innocent. Based on racial profiling strategies, the criminal justice system has made crime a race issue. Therefore, for any person in possession of illicit drugs apprehended, many more law-abiding minorities are treated as if they are criminals.

Racial profiling tactics in themselves contribute to disparities in arrest and high crime rates attributed to minorities. This trend eventually leads to minority-majority prison population. Therefore, racial profiling has become an enhancer manifesting itself in "self-fulfilling prophecy." The more African Americans are stopped, searched, arrested, prosecuted and imprisoned, the more law enforcement officials sharpen their motives to acquire more resources in order to apprehend more. When the innocent is treated as the guilty, the casualty is the constitution that cries out for the rule of law and equal protection under the law. Minorities will lose faith in the system and the integrity of its processes to uphold their civil and constitutional rights.

The impact of this pattern of overrepresentation of ethnic minorities in Maryland's prison system has not only caused an expansion of the prison bureaucracy, but has had an effect on the state's economic, social and political milieu. First, It has cost the state billions of dollars to fight the war on drugs and crime. On both the state and federal levels, the War on Crime and Drugs has similar results. In the 1980's it took an average of \$70,000 to cater for an inmate in maximum security prison and about \$35,000 for a lesser offense in the federal prison for one year. The lesson of

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mass recidivism with nothing to show for suggested a lost cause and waste of money.

Next, growth in corrections spending has generated a corresponding budget shortfall of about 25% for the state of Maryland. According to the Justice Policy Institute study of October 2003, The State of Maryland's corrections budget increased by \$300 million, a figure which was about 25% (a quarter) of its \$300 million budget shortfall it experienced between 1985 and 2003. Moreover, the effects of long incarceration and ex-convict syndrome and status affect the individual, family and community in a negative way as well. For example, an ex-convict finds it very difficult to get and keep jobs, secure housing, maintain stable family, be reinstated to vote, run for political office, qualify for or even secure loans from the bank. On top of that, the prisons are the biggest incubators of communicable diseases – Tuberculosis, Acquired Immune Syndrome (AIDS) and communicable diseases that mostly afflict prison inmates who eventually become carriers as a result of neglect, poor hygiene and lack of treatment.

Increasing number of African-American males find themselves, in their early years, tangled with the judicial system with little or no appropriate representation, and even in circumstances where they are not guilty, are forced to plea bargain and received harsh sentences for crimes they did not commit (Free 1997). In circumstances where there are crimes committed, they are forced to plea to lesser charges, just to find themselves serving the same length of sentences, as if they did not plea bargain at all. Female heads of households are forced to earn meager living, or become dependent on the government for welfare where there are small children, and further labeled by society as “welfare queens.” The African American woman's hope of marrying an African American male who has completed college becomes less and less likely, and society again, labels her as counter to the mainstream expectation of women. African American women again, must fend for the family while the male is incarcerated, or she is left with the children because of the African American male's economic condition brought on by incarceration. African American college and universities are seeing higher numbers of



females in the classrooms, and Universities are acknowledging the absence of African American males as a crisis in the community. (Elizabeth City State University Report, 2007)

If these conditions continue, the African American community will be further weakened and become more and more dysfunctional. The female will continue to be the sustainer, and in cases where the African American male presence exist, they will find themselves working much harder to keep up with the responsibility of family, extended family and society serving as surrogate fathers to other children, often under the threat of profiling, mistrust and negative stereotypes.

In considering these problems, the Justice Policy Institute suggested the following actions by the government:

1. To divert non-violent and drug offenders from prison to treatment.
2. Return sentencing discretion to judges
3. Abolish mandatory sentencing and its guidelines
4. Reform parole practices in order to reduce recidivism rate
5. Require racial and ethnic impact statement studies to guide future criminal justice legislation

## **CONCLUSION**

How to address imbalances in incarceration? Perhaps, a lesson in history along with sensitivity training for the judges and attorneys should be a prerequisite for practicing law. Further, civic classes in public school must address the rights of the individual, with an emphasis on due process and the right of the individual to go to trial, especially when wrongfully accused.

Uniform sentencing and rehabilitation (Spohn, 2000) must be considered as a way to salvage the African American community, or the United States will find itself unable to compete in the global society. Through existing judicial process, it will have rendered one-fourth of its population dependent, crippled and unable to compete. If community service sentences are handed-out uniformly and rehabilitation for both African American and white defendants for similar crimes are imposed as part of the

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sentencing, then a significant percentage of young African American male will have the same possibility of remaining in the community and becoming productive citizens.

The media must be sensitized to the undercurrent of racism that exists in reporting. African American and white communities should communicate and where necessary, pressure the media to review their reporting practices in order to diminish these blatantly stereotypical reporting. The media has long been perceived as more likely to protect the white defendant by not stating race or by allowing the defendants to cover their faces, and in the case of television shows, even cover the handcuffs. The description of the white defendant will often be around the issue of connections to friends and neighbors, observed the *Amsterdam News* (2006); Serial killer Dale Hausner was described as, "always polite to friends." The Columbine killer was described as coming from a "stable middle class family." When African American defendants are in the news, their handcuffs are visible, their family often only shown when they misbehave with the police, or vividly portrayed as dysfunctional.

Several solutions are recommended in this study to sanitize and reform the criminal justice system through sweeping and appropriate innovations:

- Revisit the uniform sentencing approach.
- Provide adequate rehabilitation for minority inmates while they are in prison.
- Provide prisoner post-incarceration resettlement assistance in order to facilitate their transition from prison to community.
- Provide sensitivity training for judges, attorney and other stakeholders in the criminal justice system
- Make treatment centers alternatives to prisons, especially in victimless and nonviolent offenses.
- Do away with mandatory sentencing and its guidelines.
- Reform current parole practices that are fueling high rates of recidivism.
- Grant Judges, rather than prosecutors, more sentencing discretion.
- Pressure the media to tone down on their racially biased and stereotypical projection of African American images in news reporting and entertainment.

- Change the focus of the court system from adversarial emphasis to problem solving – drug treatment, desistance and resettlement.
- Create specialized courts to handle drug use, domestic relations abuses so as to lesson prison overcrowding as well as assist in quick resolution of less complicated cases.
- Enhance the use of technology to replace paper trails, and hasten court transactions and related activities, such as filing of cases and publication of final decisions.

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