



RACE matters

Unequal Opportunity within CRIMINAL JUSTICE

Why Equal Opportunity is Important

- We know much of what is needed to divert persons from paths to incarceration and re-incarceration. The factors most critical for avoiding involvement with the criminal justice system are the same as those that predict success upon community re-entry following incarceration: educational credentials, steady employment, substance abuse treatment, and family connections.
- The consequences of incarceration and recidivism are far-reaching. Many state and federal laws pose barriers to successful re-entry, the ability to support a family, and responsible citizenship by putting specific jobs off-limits to returnees, banning them from public benefits and public housing, and denying them the right to vote after serving their time.¹ While the majority of state inmates held a low-wage job prior to incarceration, the economic "cost" of incarceration for men is a loss of \$6,000–\$7,000 annually.²
- Embedded racial inequities produce unequal opportunities for how people fare in the criminal justice system. Systematic policies, practices, and stereotypes work against women and men of color to affect their life chances and their vulnerability to getting involved with the criminal justice system. We need to understand the consequences of embedded racial inequities, how disparities are produced, and how they can be eliminated in order to ensure that all adults have the same opportunity to be responsible family and community members.

Barriers to Equal Opportunity

- Racial stereotyping and discrimination. On the front end of the criminal justice process, African Americans and Latinos are more likely to be racially profiled: stopped by police, have their vehicle and/or their person searched, and have gang loitering laws and force used against them.³
- Disproportionality at every step of the criminal justice process. Even when people of color and Whites have similar circumstances, African Americans and Latinos are more likely to be subjected to racial profiling, arrest, prosecutorial discretion, receipt of jail over bail, higher bails for similar charges, worse proposals in plea bargaining, longer sentences, and disproportionate receipt of the death penalty.⁴ Native

Americans receive longer sentences, are denied bond more often, and receive fewer suspended sentences than Whites.⁵ Limited data show that about half of all African Americans are admitted to prison for probation or parole violations as compared to about 1/3 of Whites and 1/5 of Hispanics.⁶

- Statutory biases. The fairness of drug laws that equate the possession of 5 grams of crack cocaine with the possession of 500 grams of powder cocaine has been questioned by the U.S. Sentencing Commission, because they produce lengthy incarceration for street level sellers and other "low culpability" offenders.⁷ Further, federal bans on access to public assistance apply to no other offenses beyond drug-related crimes. Additionally, "three-strikes" laws are being used disproportionately against minorities, with African Americans 12 times more likely than Whites to get these sentences, even though 2/3 of both groups are non-violent offenders.⁸ The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 provides a different system of criminal justice for legal permanent residents through the option of extra penalties for prior crimes and re-categorization of even non-violent and minor crimes into aggravated felonies that result in automatic deportation proceedings.⁹ Federal laws granting federal and state governments jurisdiction over Native American nations and peoples fail to recognize Indigenous laws and conceptualizations of justice.¹⁰
- Poverty's interaction with race in criminal defense. Because African Americans, Latinos, and Native Americans are disproportionately lower-income, they are more likely than Whites to have to rely on over-worked public defenders rather than private counsel for their defense and plea bargaining and less likely to afford bail if it is an option.¹¹
- Vicious cycle of discrimination. More minority arrests and convictions – themselves grounded in unequal treatment – perpetuate the belief that minorities commit more crimes, which in turn leads to more minority racial profiling and more minority arrests.¹² The longer this cycle continues, the more devastated minority communities become, and the less informal social control is able to keep them stable and secure.¹³

1. M. Love, "Starting Over with a Clean Slate," *Fordham Urban Law Journal*, July, 2003.

2. M. Joseph, "The Economic Consequences of a Criminal Background," 2002.

3. E. Aguirre Jr., "Profiling Mexican American Identity," *American Behavioral Scientist*, March, 2004.

4. E. Lotke, "Racial Disparity in the Justice System: More than the Sum of its Parts," *FOCUS*, May–June 2004.

5. C.E. Garrow, "Indigenous Nations and the U.S. Justice System," *Syracuse University College of Law*, February 2005.

6. R.L. Cohen, "Probation and Parole Violators in State Prison, 1991," *Bureau of Justice Statistics*, August 1995.

7. "Fifteen Years of Guidelines Sentencing," www.uscc.gov/research.htm.

8. E. Lotke, above.

9. A. Leong, "From Model Minority to Chai Soua Vang," *University of Massachusetts, Boston*, February 2005.

10. C.E. Garrow, above.

11. Lotke, above.

12. Leadership Conference on Civil Rights, "Justice on Trial: Racial Disparities in the American Criminal Justice System," www.civilrights.org/publications/reports/cj/.

13. D. R. Rose & T. Clear, "Incarceration, Re-Entry, and Social Capital," in J. Travis & M. Waul, *Prisoners Once Removed*, Urban Institute Press, 2003.

The Consequences of Unequal Opportunity

- **Disproportionate imprisonment.** Data from 2001 show that the prevalence of imprisonment was higher for Black males (17%) and Hispanic males (8%) than for White males (3%) and for Black females (2%) and Hispanic females (1%) than White females (<1%). Based on current rates of first incarceration, an estimated 32% of Black males will enter State or Federal prison during their lifetime, compared to 17% of Hispanic males and 6% of White males.¹⁴ Native Americans are less than 1% of the population but comprise 3% of federal and state inmates, with some states having even greater levels of disproportionality.¹⁵
- **Differential post-release consequences.** Each day, about 1,600 people leave prison and return to the community. This represents more than 600,000 returnees annually, with about 2/3 of them being Black or Hispanic.¹⁶ Upon release from prison, Whites with criminal records have considerably greater opportunities than their counterparts of color. Whites with criminal records are more likely to be hired than Black applicants with similar education and experience who have no criminal record at all.¹⁷
- **Disparate impact on families and children.** Seven percent of African American children, 3% of Hispanic children, and <1% of White children have a parent in prison. These statistics mean that children of color are more likely to have their lives disrupted by the trauma of a parent's imprisonment, along with its implications for their financial, academic, and emotional well-being. Children with incarcerated parents are 5 times more likely than their counterparts to come into contact with the criminal justice system themselves.¹⁸
- **Disparate impact on neighborhoods.** Because of ongoing racial and class segregation in central cities, the neighborhoods most likely to be impacted by arrest, incarceration, and re-entry are working class and low-income communities of color in and around the central cities of metropolitan areas.¹⁹ Some of these neighborhoods have "million dollar blocks" in which more than \$1 million is spent per year to incarcerate and return residents.²⁰

Strategies to Promote Equal Opportunity

- **Compilation of data and use of its results to minimize bias.** Collecting and analyzing data to determine if profiling or discrimination is occurring is a critical first step toward disparities reduction. When the U.S. Customs Service saw that 43% of people it searched were minorities but found illegal material on 7% of Whites, 6% of African Americans, and 3% of Latinos, it decided to focus searches on suspicious behaviors rather than race. As a result, it conducted 61% fewer searches while increasing its seizure of cocaine, heroin, and ecstasy.²¹
- **Change in policies and practices that contribute to disproportionality.** The Justice Department has issued guidelines banning racial profiling by federal law enforcement officials, and at least 29 states have implemented anti-racial profiling measures. At least nine states have eliminated or restructured their mandatory minimum sentences.²² The Sentencing Project's manual on "Reducing Racial Disparity in the Criminal Justice System"²³ offers specific steps that can be taken at each key decision point in the criminal justice system to reduce racial disparities.
- **Resource allocation for diversion options.** Because of the high number of prisoners incarcerated for non-violent and drug-related crimes and returned there for technical parole violations, alternative interventions have a good chance of being effective without compromising public safety. This approach in selected juvenile justice system locales – when combined with intentional efforts to reduce disproportionate minority confinement – has yielded positive results without compromising public safety.²⁴
- **Inclusion of the voices of those most affected by the issue when shaping interventions.** Organizations like the Fifth Avenue Committee²⁵ address a range of issues faced by returning community members and use this community's first-hand understanding of what's needed and what can work to shape their programs focused on successful re-entry. This approach taps the strengths of people and communities of color and is more likely to produce interventions that are culturally appropriate.

14. Bureau of Justice Statistics, www.ojp.usdoj.gov/bjs/crimoff.htm.

15. C.E. Garrow, above.

16. J. Travis et al., "From Prison to Home," Urban Institute 2001.

17. E. Kane, "Study: White Ex-Cons Get Jobs Blacks Can't," FOCUS, May/June, 2004.

18. K. Gabel & D. Johnson, *Children of Incarcerated Parents*, 1997.

19. J.P. Lynch & W. J. Sabol, "Prisoner Reentry in Perspective," Urban Institute, 2001.

20. E. Cadora et al., "Criminal Justice and Health and Human Services," in J. Travis & M. Waul, above.

21. Lotke, above.

22. J. R. Barras, "States, Feds Move to Right Racial Wrongs," FOCUS, May/June, 2004.

23. www.sentencingproject.org, October, 2000.

24. E. Hinton-Hoyt, et al. "Reducing Racial Disparities in Juvenile Detention," Annie E. Casey Foundation, www.aecf.org.

25. www.fifthave.org.

