



Disparity in the Criminal Justice System

Presented by the Commission on Racial
and Ethnic Disparity in the Criminal Justice
System

August 20, 2010

Background on the Commission

- Created by the CT state legislature in 2000 (P.A. 00-154)
- Purpose of the Act:
“To establish a commission dedicated to eliminating racial and ethnic disparity in the criminal justice system.”

Background on the Commission

- The Commission's many responsibilities are set forth in state law (C.G.S. section 51-10c)
- The far-reaching charge requires the Commission to examine every aspect of the criminal and juvenile justice systems

Background on the Commission

- Commission is chaired by Appellate Court Judge Lubbie Harper, Jr.
- Consists of 20 members
- Meets every other month
- Meetings are held in Hartford and are open to the public

Background on the Commission

- Commission's website can be accessed from the state homepage

<http://www.ct.gov/redcjs/site/default.asp>

- Meeting notices and agendas are also posted on the Judicial Branch website (www.jud.ct.gov) under Committees and Commissions

National View

- National incarceration rates per 100,000 residents in 2009
 - Whites: 799
 - African Americans: 5,082
 - Hispanics: 1,964
- These figures mean that
 - 0.8% of whites are incarcerated
 - 1.96% of Hispanics are incarcerated
 - 5.1% of African Americans are incarcerated

- -Bureau of Justice Statistics. *Prison Inmates at Midyear 2009 – Statistical Tables*, June 2010, NCJ 230113

National View

- African Americans are incarcerated at more than six (6.36) times the rate of whites

Bureau of Justice Statistics. *Prison Inmates at Midyear 2009 – Statistical Tables*, June 2010, NCJ 230113

- Hispanics are incarcerated more than double (2.46) the rate of whites

Bureau of Justice Statistics. *Prison Inmates at Midyear 2009 – Statistical Tables*, June 2010, NCJ 230113

- The states with the highest black-to-white ratio are Iowa, Vermont, New Jersey, **Connecticut & Wisconsin**

Marc Mauer, and Ryan S. King, *Uneven Justice: State Rates of Incarceration by Race and Ethnicity*, The Sentencing Project, 2007

National View

- 1 in 9 (11.7%) African American males between ages of 25 and 29 is currently incarcerated in a prison or jail
- Long-term consequences for individuals and communities:
 - Employment prospects
 - Family formation
 - General quality of life

Marc Mauer, and Ryan S. King, *Uneven Justice: State Rates of Incarceration by Race and Ethnicity*, The Sentencing Project, 2007

National View

- Per the 2000 census, the U.S. population was
 - **82.2** percent white
 - **12.8** percent black/ African American
 - **4.1** percent Asian/Pacific Islander
 - **0.9** percent Native American
- Within these four primary racial categories, **11.8** percent reported Hispanic ethnicity

NOTE: These figures are from the 2000 census; figures from the 2010 census are not yet available.

Connecticut View

- Connecticut has an average rate of black incarceration but a below-average rate of white incarceration

Marc Mauer, and Ryan S. King, *Uneven Justice: State Rates of Incarceration by Race and Ethnicity*, The Sentencing Project, 2007

- As of July 1, 2010, the CT DOC reported having:
 - Total incarcerated pop. = 18,431
 - Black = 7,842 (42.5%)
 - White = 5,689 (30.9%)
 - Hispanic = 4,780 (25%)
 - Other = 120 (<1%)

Definition of *Race* and *Ethnicity*

- ***Race***: Defined as major biological divisions of mankind as distinguished by color of skin, color and texture of hair, bodily proportions and other physical features
- ***Ethnicity***: Differences between groups of people based on cultural customs, such as language, religion, foods, family patterns

Disparity vs. Discrimination

- ***Disparity*** refers to a difference but one that does not necessarily involve discrimination
- ***Discrimination*** is a difference based on *differential treatment* of groups without reference to an individual's behavior or qualifications

Types of Discrimination

- ***Systematic discrimination*** - discrimination occurs at all stages of the criminal justice system, in all places, and at all times
- ***Institutionalized discrimination*** - disparities in outcomes result from established (institutionalized) policies
- ***Contextual discrimination*** - discrimination in certain situations or contexts
- ***Individual acts of discrimination*** - carried out by particular justice officials

Why so much Disparity in CT's Criminal Justice System?

Some important factors that contribute to disparity in Connecticut are:

- 1. Economic Inequality**
- 2. Residential Segregation**
- 3. War on Drugs**
- 4. Urban vs. Suburban Contact with the Criminal Justice System**
- 5. Pretrial Release Decisions**

Economic Inequality

Nature and extent of inequality in the U.S.:

- A large gap between rich and poor, without regard to race or ethnicity
- A large economic gap between white Americans and racial minorities
- The growth of the very poor—a group some analysts call an underclass—over the past 30 years

Economic Inequality



Median family income is a standard measure of economic status

- U.S. Census Bureau data reveal wide gaps between racial and ethnic groups
- In 2004, the median household income in the U.S. was **\$45,697**

BUT

- It was **\$30,134** for African American families.
- It was **\$34,241** for Hispanic families.

Economic Inequality

Household wealth (net worth) figures reveal an even larger gap

- **Income** measures how much a person or family earns in any given period.
- **Wealth** measures all accumulated assets: home, cars, savings, stocks, etc.

Median net worth of households in 2000 was:

- **\$79,400** for whites
- **\$7,500** for African Americans (< one-tenth white net worth)
- **\$9,750** for Hispanics (<one-eighth white net worth)

Economic Inequality

- Wealth cushions a family against temporary hard times, such as loss of a job or illness
- Wealth is passed to the next generation
- So is poverty
- In these respects, wealth forms an important part of the social capital that shapes a person's advantages, or lack of advantages, in life

Economic Inequality

Social Capital & Cultural Capital –

3 types of capital:

- ***Economic capital***: one's financial resources
- ***Social capital***: a person's network of friends, relationships, and other contacts
- ***Cultural capital***: the education, knowledge, or skills that give a person an advantage

Economic Inequality

Conditions affecting the very poor have three important effects:

- The conditions tend to perpetuate poverty
- The conditions, such as family breakdown, lead to higher involvement in crime
- Members of the underclass lack and are unable to develop the social capital that is likely to help them rise out of severe poverty

Residential Segregation

2 significant consequences of concentrating offenders in certain areas:

- Law-abiding residents of those areas suffer high rates of predatory crimes
- Individuals living in those areas have an increased propensity to engage in criminal activity

Residential Segregation

- Connecticut's metropolitan communities are characterized by residential segregation
- Residential segregation has a direct impact on crime because it concentrates high-rate offenders in one area

Residential Segregation

- Teenagers in these areas are subject to disproportionate contact with people involved in criminal activity, and comparatively less contact with law-abiding peers
- The sheer weight of this peer influence can overwhelm positive parental influence and, in the worst situations, coerces teens into joining crime-involved gangs

Residential Segregation

Impact of Crime on Neighborhoods:

- Direct economic loss and physical harm to residents
- Damaged quality of life
- Out-flight by employed and law-abiding residents
- Intensified concentration of unemployed and high-rate offenders
- Damage to businesses

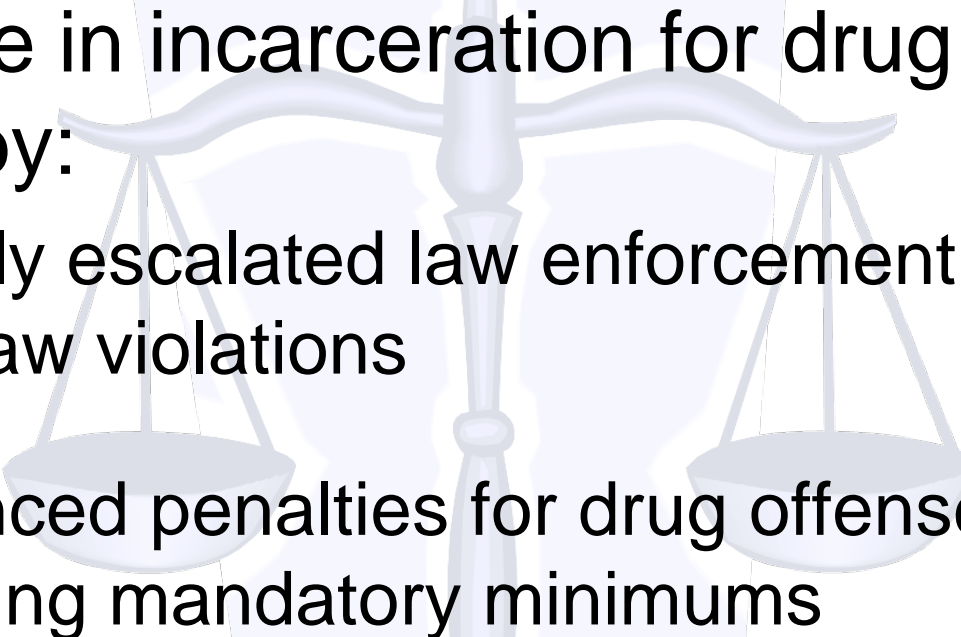
The War on Drugs

The War on Drugs began in the 1980s

- It has been a major contributing factor to the historic rise in the prison population during this period
- From a figure of about 40,000 people incarcerated in prison or jail for a drug offense in 1980, there has since been an 1100% increase - to a total of 500,000 today

The Changing Dynamics of the War on Drugs, Mark Mauer,
The Sentencing Project, April 2009

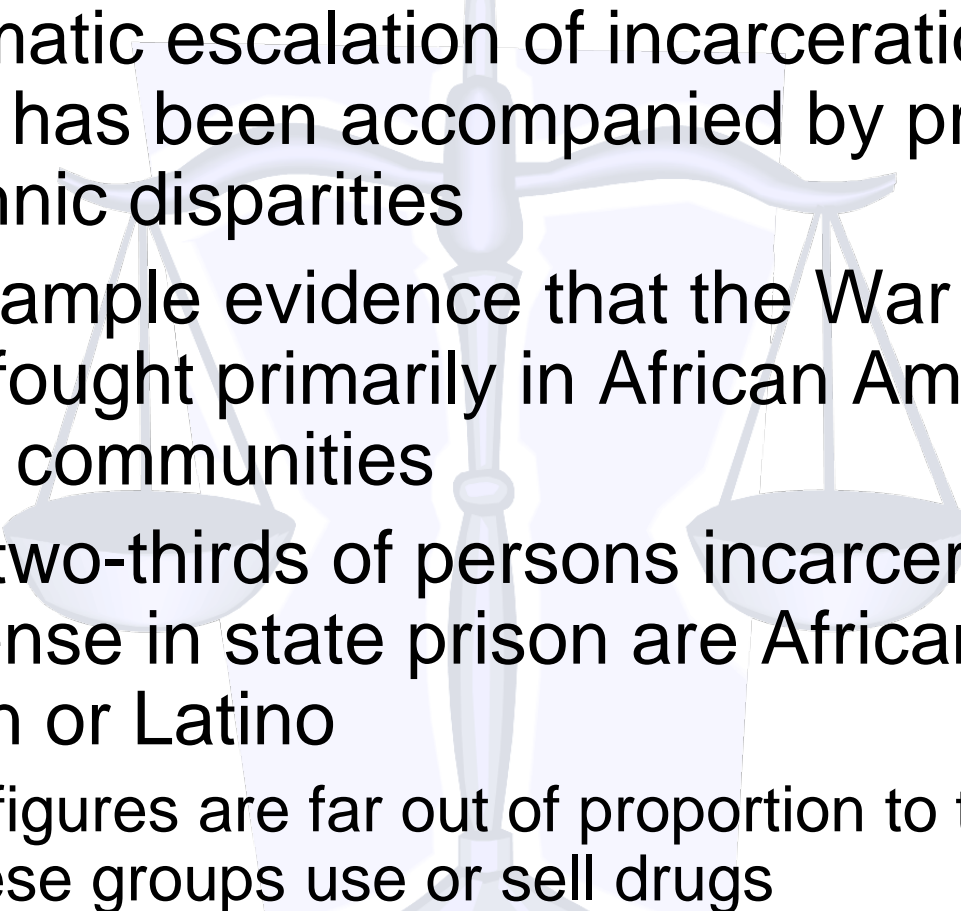
The War on Drugs

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- Increase in incarceration for drug offenses fueled by:
 - Sharply escalated law enforcement targeting drug law violations
 - Enhanced penalties for drug offenses, including mandatory minimums

The Changing Dynamics of the War on Drugs, Mark Mauer,
The Sentencing Project, April 2009



The War on Drugs

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- The dramatic escalation of incarceration for drug offenses has been accompanied by profound racial/ethnic disparities
 - There is ample evidence that the War on Drugs is being fought primarily in African American and Hispanic communities
 - Overall, two-thirds of persons incarcerated for a drug offense in state prison are African American or Latino
 - These figures are far out of proportion to the degree that these groups use or sell drugs

The War on Drugs

- Arrest records consistently reflect that African Americans and Hispanics experience higher arrest rates than do whites for drug offenses
- These data are inconsistent with national drug use data showing whites are more likely than either African Americans or Hispanics to report using drugs

The War on Drugs

Research demonstrates that much of this disparity is fueled by disparate law enforcement practices

- Crime in low-income communities of color tends to be street crime
- Street crime is an easy target
- Substance abuse in communities with substantial resources is more likely to be addressed as a family or public health problem

The War on Drugs

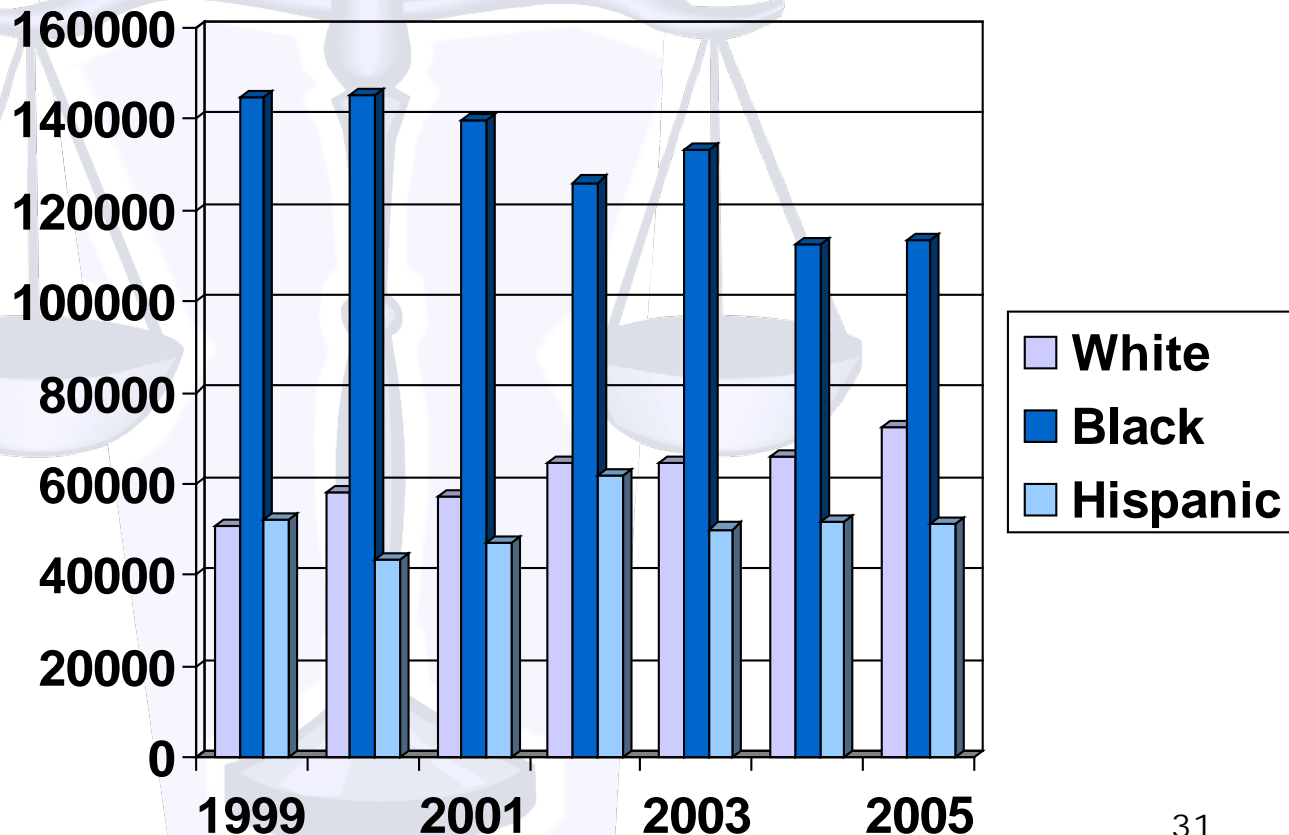
The tide may be beginning to turn

- Insignificant increase in number of people incarcerated in state prisons for a drug offense from 1999-2005 (<1%)
- Significant shift in racial composition of people incarcerated for a drug offense over the same period

The War on Drugs

In seven years, incarceration of African Americans for drug offenses has decreased by 21.6 %, while the incarceration of whites for drug offenses has increased by 42.6%. Incarceration of Hispanics for drug offenses has decreased by 1.9 %.

Incarceration For Drug Offenses By Race



Urban vs. Suburban

- Commission's research showed that the most important predictor of whether a defendant is incarcerated is not race or ethnicity, but **criminal record**
- This has a disproportionate impact on the minority community because, as research has shown, its members have tended to accumulate more extensive criminal records than non-minorities
- This is due to a variety of factors, including socio-economic conditions as well as the differences between urban and suburban police departments

Urban vs. Suburban

- To begin to address these issues, in 2007 Commission members made a decision to focus on initiatives to prevent youth and young adults from entering the juvenile and criminal justice systems

Urban vs. Suburban

Alternatives to Arrest

- Alternatives to arrest are available in a number of cities and towns for juveniles who are first-time offenders
- However, they are not available for young adults – 17 and over – who are first-time offenders
- Often the behavior that resulted in police intervention can be adequately addressed by community-based resources

Urban vs. Suburban

New Haven Pilot Program

Purpose: To provide alternatives to arrest for young adults who are stopped by the police for minor crimes

- Still in the beginning planning phase
- Decisions still need to be made about:
 - What crimes will fall under the program
 - Who will fall under the program
- Funding commences April 2011



Pretrial Release

National studies examining the effect of race on bail decisions have yielded contradictory findings

- Some researchers conclude that judges' bail decisions are based seriousness of the offense & the defendant's prior criminal record; race has no effect once these factors are taken into consideration

Pretrial Release

- Other researchers contend that the defendant's economic status, not race, determines the likelihood of pretrial release
- A number of studies document *direct* racial discrimination in bail decisions
- There also is evidence that defendant race interacts with other variables related to bail severity, such as prior records or employment status

Pretrial Release

Pretrial Release decisions are very important because they may have an influence on case outcomes

- Bail decision making has been shown to have a “spillover” effect
 - BJS study has shown that those detained before trial were disproportionately convicted
 - Pretrial status was also shown to have affected the likelihood of incarceration upon conviction (versus a probationary or other non-jail sentence)

Pretrial Release

A 2003 study conducted for the Commission found the following:

- Seriousness of charge (A felony, B felony, etc.) was the single most powerful predictor of bail commissioner involvement
 - It was six times more powerful than the next significant indicator, which was number of cases

Pretrial Release

However:

- Race/ethnicity was the **third** most powerful predictor of bail commissioner involvement out of the six available predictors for analysis
 - Bail commissioners were more likely to see African Americans and Latino/Hispanic defendants, even when charge severity, number of cases, gender, age, and number of charges were held constant

Pretrial Release

And:

- When all charges (felonies and misdemeanors) were considered, Caucasians were approximately twice as likely as African Americans or Latinos/Hispanics to be released with a written or conditional promise to appear
- When severity of charge was considered, the difference was less apparent

Pretrial Release

And:

- While the severity of the most serious charge at arrest was the most powerful predictor of a promise to appear
- Multivariate analysis showed that race/ethnicity was also a statistically significant predictor
 - It was the fifth strongest predictor of the eight variables available for analysis of release decisions

Pretrial Release

The following steps were taken to address this issue:

- In 2003 the Judicial Branch initiated a multi-year project to develop a more systematic and consistent bail determination process
- 3 significant outcomes of this project:
 1. 2003 Validation of the Case Data Record
 2. 2005 Bail Decision Aid
 3. 2008 Financial Bond Guideline

Pretrial Release

1. Validation of Case Data Record

- In 2003, based on a study by CCSU, the weighted release criteria used by Bail staff in making recommendations for release was modified
 - Some criteria were eliminated
 - Some were weighted differently

Pretrial Release

- The pilot of the revised weighted release criteria showed that Bail staff were more likely to order or recommend non-financial releases (66% vs. 52%) under the revised weighted release criteria
- The revised weighted release criteria was implemented statewide in 2004

Pretrial Release

2. Bail Decision Aid

- In 2005 CCSU was engaged to review the pretrial release decision-making process and develop a system whereby more non-financial release recommendations would be made
- The project resulted in the creation of the Bail Decision Aid

Pretrial Release

- The Bail Decision Aid assists bail staff in obtaining additional information in the following areas:
 - Personal Needs (substance use, education, employment)
 - Compliance Needs (support and structure, prior compliance)
 - Safety Risk (prior record)

Pretrial Release

- A Decision Aid Pilot study showed:
 - Greater likelihood of recommending a non-financial condition of release (56% vs. 20%)
 - Greater likelihood of recommending a condition (64% vs. 21%)
 - Higher percentage of recommendations that matched the judges' order (65% vs. 49%)
- In 2005 the Bail Decision Aid was implemented statewide

Pretrial Release

3. Guidelines for Financial Bond Recommendation

- In 2008 over 50,000 financial bond records from 2006-2007 were analyzed
- Based on analysis, a Financial Bond Guideline was developed to guide bail staff
- The Financial Bond Guideline considers the offense characteristics, mitigating or aggravating case factors and client risk
- In September 2009 the Financial Bond Guideline was implemented statewide

Implicit Bias

- Numerous studies have shown that everyone has implicit biases
- We all have preconceived notions, regardless of our background or skin color, that can play into decision-making
- Awareness of these biases allows them to be addressed

Implicit Bias

Prof. Kang, an expert on Implicit Bias, states,

“We naturally assign people into various social categories divided by salient and chronically accessible traits such as age, gender, race and role ... [this comes] from our experiences with other people, some of them direct (i.e., real-world encounters) but most of them are vicarious (i.e., relayed to us through stories, books, movies, media and culture).”

Implicit Bias

It is important for decision-makers to be aware that they have implicit biases

“Given the critical importance of exercising fairness and equality in the court system, lawyers, judges, jurors and staff should be particularly concerned about identifying such possibilities.” (Kang)

Looking Ahead

There are no problems we cannot solve together, and very few we can solve by ourselves.

Lyndon B. Johnson