

# **The Crisis of the Young African American Male and the Criminal Justice System**

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## **THE CRISIS OF THE YOUNG AFRICAN AMERICAN MALE AND THE CRIMINAL JUSTICE SYSTEM**

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### **Introduction**

In recent years policy attention regarding the crisis of the African American male has focused on a variety of areas in which African American males have suffered disproportionately from social ills. These have included education, housing, employment, and health care, among others. Perhaps in no other area, though, have these problems been displayed as prominently as in the realm of crime and the criminal justice system.

African Americans have been affected in this area in two significant regards. First, African Americans are more likely to be victimized by crime than are other groups. This creates a set of individual and community problems which impede upon other areas of productive activity. Second, the dramatic rates at which African American males have come under some form of criminal justice supervision has created a complex set of consequences which affect not only individual victims and offenders, but families and communities as well.

This paper will explore the current status of African American males within the criminal justice system and consider projections for the future should current policies continue. It will also assess the factors that have created such high levels of criminal justice control. Finally, it will provide a set of recommendations for public policy that would help to alleviate the disastrous circumstances that currently prevail while having a more constructive impact on public safety.

### **Overview of the Status of African American Males and the Criminal Justice System**

A wealth of statistical information is now available to document what a walk through virtually any urban courthouse or state prison displays quite graphically. A courtroom observer in New York, Detroit, Atlanta, Los Angeles or any other major city will witness a sea of black and brown faces sitting at the defense table or shackled together on the bus transporting prisoners from the jail for court hearings. In the prison visiting room, mothers, wives, and girlfriends who have often traveled several hours by bus or car wait to see their loved ones in stuffy and noisy visiting rooms with little privacy.

Living conditions within the prison system have never been pleasant or comfortable, but a harsher political climate now threatens to undo many of the reforms achieved through litigation and political advocacy over the past several decades. Congressional action in 1994 prohibited inmates from receiving Pell grants to continue higher education studies, while many states have passed their own legislation denying inmates access to various forms of recreation or cultural activities. Much of this legislation has been not just mean-spirited but counterproductive as well, by limiting prisoners' access to the acquisition of skills that might be used constructively upon their return to the community.

These conditions now disproportionately affect African American males and other minorities due to their overwhelming numbers within the criminal justice system. The state of these disproportions can be seen in the following:

- 49% of prison inmates nationally are African American, compared to their 13% share of the overall population.<sup>1</sup>
- Nearly one in three (32%) black males in the age group 20-29 is under some form of criminal justice supervision on any given day -- either in prison or jail, or on probation or parole.<sup>2</sup>
- As of 1995, one in fourteen (7%) adult black males was incarcerated in prison or jail on any given day, representing a doubling of this rate from 1985. The 1995 figure for white males was 1%.
- A black male born in 1991 has a 29% chance of spending time in prison at some point in his life. The figure for white males is 4%, and for Hispanics, 16%.

While African American males have been the most severely affected demographic group within the criminal justice system, other minorities have also been disproportionately affected. Hispanics now constitute 17% of the prison population nationally, compared to their 10% share of the total population. The number of Hispanic inmates increased by more than half in the period 1990-96. Women, and particularly minority women, while incarcerated in smaller numbers than men, have also experienced dramatic growth in recent years. The number of women in the prison system increased by 418% from 1980 to 1995, compared to a rise of 236% for men. Black women are now incarcerated at a rate seven times that of white women.

### **Toward an Understanding of the Over-representation of African American Males in the Criminal Justice System**

In 1954, at the time of the historic *Brown v. Board of Education* decision, African Americans constituted about 30% of persons admitted to state and federal prisons. That figure should have been disturbing since it was substantially higher than the black share of the national population. But that proportion has now increased still more dramatically, to the point where blacks represent half of all prison admissions.

This development would seem to be rather odd considering the changes that have taken place in American society over the past half-century. The nation has experienced the civil rights movement and economic opportunities have opened up for many historically disadvantaged groups. Within the criminal justice system, minorities have moved into positions of leadership in many jurisdictions, so it is now common to see blacks as police chiefs, judges, and prison

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<sup>1</sup> Unless otherwise specified, all data on prison and jail populations throughout is taken from various reports of the Bureau of Justice Statistics.

<sup>2</sup> Marc Mauer and Tracy Huling, "Young Black Americans and the Criminal Justice System: Five Years Later," The Sentencing Project, October 1995.

wardens, perhaps not in proportion to their share of the population, but nonetheless considerably more prominently than in former times.

Given these positive changes, how has the situation of black males within the criminal justice system worsened so considerably to the point where it threatens the viability of an entire generation? Some have argued that these outcomes may be unfortunate, but are inevitable given high black rates of crime. Others suggest that a new generation of “superpredators” unlike any cohort of the past has been created. In the following sections we analyze the statistical evidence and research findings that enable us to understand these developments. These can be divided into four areas of inquiry: 1) crime rates; 2) race and class effects; 3) bias within the criminal justice system; and, 4) drug policies.

### **Crime Rates**

All things being equal, the degree to which members of a demographic group engage in crime should be related to the extent to which members of that group are incarcerated. In addition, among those individuals who commit crimes, the extent of an individual’s criminal history is a critical factor that influences whether an offender will be sentenced to prison. Thus, if African Americans exhibit higher rates of serious offending and/or have lengthier criminal histories than other groups, we could expect this to be reflected in the composition of the prison population.

For property offenses, African Americans constituted 32% of arrests in 1996<sup>3</sup>, disproportionate to their 13% share of the national population. (While arrest rates may not correlate precisely with crime rates, they are generally the best approximation of the degree of offending.) For violent crimes, though, black offending rates are considerably higher than for other groups, accounting for 43% of those arrests in 1996.

The high black proportion of violent crime clearly explains some of the disparity that we see in the prison population, but not to the extent that is often portrayed in popular media. Two issues in particular stand out in this regard:

- While the black proportion of violent arrests is high, it has remained essentially unchanged for twenty years. Since 1976, this proportion has fluctuated in a narrow range of 43-47%. Even during the upsurge of black juvenile homicides in the late 1980s, a declining rate of homicide among black adults resulted in a stable rate overall for African Americans.
- Explanations of black juvenile homicides in the 1980s that focus on the “superpredator” theory have no basis in fact. Justice Department data show that the entire rise in such homicides for the period 1984-1994 was related to firearms, as has been the decline in homicides beginning in 1995. Thus, the *lethality* of young offenders increased by having access to guns, rather than there being a new “breed” of young killers. Further, if the 15-19-year olds who were committing violent crimes in the late 1980s were actually “superpredators,” then they should have displayed these tendencies in the early 1980s as well, when they were in the 10-14 age range. Data for this period, though, show no such

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<sup>3</sup> FBI, Crime in the United States, 1996, 1997. All subsequent data on crime rates taken from this and previous reports in this series.

trends, with that group's rate of violence similar to other periods of time.<sup>4</sup> This therefore lends support to the explanation that the greater availability of firearms, much of it related to the drug trade, was the primary source of the increase in violence.

Prominent analyses of the overall racial composition of the prison population have been conducted by criminologist Alfred Blumstein. In an examination of the 1991 state prison population, he concluded that 76% of the higher black rate of imprisonment could be accounted for by higher rates of arrest for serious offenses.<sup>5</sup> While this held true for most crimes, the critical exception in this regard was drug offenses, which will be detailed further below. The remaining 24% of disparity might be explained by criminal histories, racial bias, or other factors.

A related examination of incarceration data by sociologists Robert Crutchfield, George Bridges, and Susan Pitchford found that while national level data seemed to show a high correlation between arrest rates and incarceration for African Americans, the variation in this relationship at the state level was quite significant.<sup>6</sup> In the northeast states, only 69% of racial disparity was explained by arrest, while in the north central states, fewer blacks were actually incarcerated than one would have predicted by just using arrest data. Overall, this suggests that a variety of factors, which include crime rates, law enforcement practices, and sentencing legislation, may play a role in the degree of racial disparity in incarceration.

A second factor that may explain higher rates of incarceration is the criminal history of an offender. The more serious a prior criminal record, the greater the likelihood of receiving a prison term for a new offense. Whether one acquires a criminal record is clearly in part related to the level of criminal activity, but it is also often a function of race, geographical location and other factors.

Many African Americans, for example, have experienced the crime known as "Driving While Black." In different parts of the country, there is strong evidence regarding the propensity of police to stop black males while driving for alleged traffic violations. Often, the justification offered for these actions is that they are necessary for the purpose of apprehending alleged drug traffickers, with the aid of drug courier "profiles." In Volusia County in central Florida, researchers documenting traffic stops made by local police in the late 1980s found that more than 70% of the drivers stopped were either African American or Hispanic. This compared to data showing that blacks constituted 12% of the state's driving age population and 15% of drivers convicted of traffic violations. Blacks and Hispanics were also stopped for longer periods than whites, and represented 80% of the cars that were searched following a stop.<sup>7</sup> These types of discretionary law enforcement practices may lead to African Americans acquiring a criminal record more rapidly than whites, later resulting in a greater chance of receiving a prison

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<sup>4</sup> Philip J. Cook and John H. Laub, "The Unprecedented Epidemic in Youth Violence," in Michael Tonry, ed., Crime and Justice: A Review of Research, University of Chicago Press, forthcoming, 1999.

<sup>5</sup> Alfred Blumstein, "Racial Disproportionality of U.S. Prison Populations Revisited," *University of Colorado Law Review*, Vol. 64, No. 3, 1993.

<sup>6</sup> Robert D. Crutchfield, George S. Bridges, and Susan R. Pitchford, "Analytical and Aggregation Biases in Analyses of Imprisonment: Reconciling Discrepancies in Studies of Racial Disparity," *Journal of Research in Crime and Delinquency*, 31 (May 1994).

<sup>7</sup> David A. Harris, "'Driving While Black' and All Other Traffic Offenses: The Supreme Court and Pretextual Traffic Stops," *Journal of Criminal Law and Criminology*, 87 (summer 1997): 562.

sentence. In addition, given that most drivers stopped in “profile” checks are in fact not drug traffickers, these practices often contribute to African American distrust of law enforcement.

### **Race and Class Effects**

As the trials of O.J. Simpson illustrated so clearly, discussions of race and the criminal justice system are often heavily overlaid with considerations of class as well. Racial disparities are related in part to the volume of crime committed by various groups, but they are also a function of differing forms of treatment that relate to the background and resources of the offender.

Criminologist Delbert Elliott has conducted analyses of youthful offending and its relation to race and class.<sup>8</sup> In longitudinal studies of data from the National Youth Survey he has found several intriguing patterns:

- Self-reported rates of offending behavior by young males are high across all racial groups, with 42% of males reporting that they have engaged in some form of violent offending – aggravated assault, robbery, or rape – by the age of 27.
- Black males engage in serious violent offending at higher rates than white males, but not dramatically so. By age 27, 48% of black males have reported at least one instance of such behavior, compared to 38% of white males, a ratio of about 5:4. For lower class males, the differences are even smaller, about 7:6 black to white.
- Offenses by blacks are more likely to lead to arrest than those of whites. While the self-reported involvement of adolescent males represents a 3:2 black/white differential, the arrest ratio is 4:1.
- While there are no dramatic differences in the degree to which blacks and whites become involved in offending *at some point*, blacks are nearly twice as likely to *continue* offending into their twenties. The key variable in this regard is the adoption of adult roles. Thus, among young adults who are employed or living in a stable relationship there are no significant differences in the persistence of offending by race.

Overall, these studies suggest that while criminal behavior cuts across race and class lines, the societal response to these behaviors may significantly influence the course of a potential criminal career. Decisions regarding the most effective balance of responses by law enforcement, social services, and community intervention are critical in determining many of these outcomes.

### **Racial Bias in the Criminal Justice System**

The criminal justice system has historically served as a focal point of much of societal racism. A long legacy of practices such as the convict leasing system, extra-judicial lynchings, and police brutality have shaped the history of African Americans and the criminal justice system. Over the past thirty years, though, significant change has occurred in some aspects of the system. In many

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<sup>8</sup> Delbert S. Elliott, “Serious Violent Offenders: Onset, Developmental Course, and Termination – The American Society of Criminology 1993 Presidential Address,” *Criminology* 32, no. 1 (1994): 1-21.

jurisdictions minorities have moved into positions of leadership within law enforcement, the courts, and corrections systems. Supreme Court decisions have placed restrictions on such practices as prosecutorial bias in jury selection. Despite these constructive changes, though, racial disproportions have worsened over this period of time.

In assessing the extent to which racial bias within the criminal justice system has contributed to these disparities, there is mixed research evidence. Imposition of the death penalty provides the most compelling evidence for ongoing racial disparity. A series of studies has demonstrated that, controlling for a wide range of variables, the race of both victim and offender has a significant impact on the determination of a sentence of death as opposed to life in prison. David Baldus and colleagues, for example, found that murder defendants charged with killing whites faced a 4.3 times greater chance of receiving death than those charged with killing blacks.<sup>9</sup>

In looking at sentencing outcomes for other offenses, the research evidence is less clear regarding whether minorities receive harsher sentences than whites. A number of studies have found little difference in sentences imposed when controlling for relevant variables, particularly the severity of the offense and the offender's prior record. A 1990 Rand study, for example, concluded that offenders in California generally received comparable sentences regardless of race for most offenses.<sup>10</sup> The one exception was in the area of drug sentences, a distinction that we will explore below.

Other research illuminates the complexity of these findings. A review of prosecutorial decisionmaking conducted by John Hagan and Ruth Peterson suggests that prosecutors stereotype cases according to case-specific characteristics, by making racially-biased assessments of the credibility of the victim and offender as witnesses. Nonwhite victims tend to be considered less credible witnesses, while white victims, especially of nonwhite defendants, are considered highly credible.<sup>11</sup> Since most crime is intraracial, committed against victims of the same race, these dynamics may actually benefit black defendants but penalize black victims in some cases. Thus, studies that conclude that no racial bias can be detected at sentencing may actually be overlooking more complex victim-offender racial dynamics.

Research on sentencing in a number of jurisdictions has concluded that disparity based on race does in fact occur. One of the more sophisticated such studies examined case processing and sentencing outcomes for persons arrested for a felony offense in New York State for the years 1990-92. Controlling for factors including prior criminal history, gender and county, the researchers found that for the more serious offenses, there was relatively little difference in sentencing, although it was estimated that 300 black and Hispanic offenders who received prison terms would not have had they been white. For property offenses and misdemeanors, though, minorities were considerably more likely to receive jail terms, resulting in an additional 4,000

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<sup>9</sup> David C. Baldus, Charles Pulaski, and George Woodworth, "Comparative Review of Death Sentences: An Empirical Study of the Georgia Experience," *Journal of Criminal Law and Criminology* 74 (fall 1983): 661-753.

<sup>10</sup> Stephen Klein, Joan Petersilia, and Susan Turner, "Race and Imprisonment Decisions in California," *Science*, (February 16, 1990).

<sup>11</sup> John Hagan and Ruth D. Peterson, "Criminal Inequality in America: Patterns and Consequences," in John Hagan and Ruth D. Peterson, *Crime and Inequality*, (Stanford, California: Stanford University Press, 1995), p. 28.

sentences a years for minorities statewide.<sup>12</sup> Similar results regarding sentencing in less serious cases have been found in other studies.

The key issue in this regard appears to lie in the use of discretion by the courts when sentencing offenders. Violent offenders, regardless of their race or ethnicity, are quite likely to be sentenced to prison. But for less serious offenders where there is an option, but no *obligation*, to sentence an offender to prison, prosecutors and judges are making decisions in each case about whether an offender will receive six months in jail, for example, or be required to enter a treatment program and make restitution to a victim.

It would be a mistake simply to attribute the results of such studies to prosecutorial and judicial racist beliefs; in some jurisdictions a significant number of prosecutors and judges are minorities prosecuting and sentencing other minorities to terms of incarceration. The results instead may reflect the degree to which offenders bring different sets of resources with them to the court system. For example, do white offenders have greater access to private defense attorneys who can devote more time to their cases to try to convince prosecutors and judges that a jail or prison term is not warranted? Do they have greater access to expert psychiatric testimony or can they afford to subsidize placement in a substance abuse treatment program? Or, is unconscious racism at play: do whites speak in a language and manner that is more comfortable to the decisionmakers in the courtroom?

These questions have important implications for developing remedies for the racial disparities that are so prominent in the criminal justice system. While some might advocate that a solution to minority overrepresentation in the prison system would be to sentence more white offenders to prison, such an approach would be extremely costly and would not alleviate any of the harms suffered by minority communities.

The alternative approach is to examine the factors that enable white, or middle class, offenders to be sentenced to non-prison terms more frequently and to replicate those conditions for low-income people. For example, if middle class offenders have greater access to drug treatment resources, courts and communities could expand such services to make them accessible to a broader range of offenders. Additionally, greater resources could be devoted to indigent defense services, a proposal to which Attorney General Janet Reno has frequently called attention.

### **Drug Policies and Racial Disparity**

Since 1980, the “war on drugs” has been the most significant factor contributing to the rise of prison and jail populations. Drug policies have also had a disproportionate impact on African Americans and have exacerbated the racial disparities that already existed within the criminal justice system. This has come about in two ways: first, drug offenses overall have increased as a proportion of the criminal justice population and, second, the proportion of African Americans among drug offenders has been increasing.

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<sup>12</sup> James F. Nelson, Disparities in Processing Felony Arrests in New York State, 1990-92, (Albany, N.Y.: Division of Criminal Justice Services, 1995).



From 1980 to 1995, drug arrests nationally nearly tripled from 581,000 to 1,476,000, thus bringing nearly a million additional drug cases to the court system each year. Over the course of this period, drug cases came to be treated much more harshly. Primarily as a result of mandatory sentencing policies adopted by all fifty states and the federal government, convicted drug offenders are now far more likely to be sentenced to prison than in the past. Justice Department data reveal that the chances of a drug arrestee being sentenced to prison rose by 447% between 1980 and 1992.

The combined impact of increased drug arrests along with harsher sentencing policies has led to a vast expansion of drug offenders in the nation's prisons and jails. Whereas in 1980, one of every sixteen state prison inmates was incarcerated for a drug offense, by 1995, one of every four prisoners was a drug offender. The increase from 19,000 drug offenders in 1980 to 225,000 in 1995 represented more than a 1000% increase in this fifteen-year period.

While the numbers of inmates in the federal prison system are smaller overall, the scale of the increase has been similar. The 4,900 federal drug offenders in 1980 represented 25% of the inmate population. This grew to 51,700, or 60%, by 1995. Looking at prisons and jails combined, there are now an estimated 400,000 inmates either awaiting trial or serving time for a drug offense, out of a total inmate population of 1.7 million.

As these policies have been implemented, they have increasingly affected African American and Hispanic communities. The African American proportion of drug arrests has risen from 25% in 1980 to 37% in 1995. Hispanic and African American inmates are more likely than non-Hispanic whites to be incarcerated for a drug offense. As of 1991, 33% of Hispanic state prison inmates had been convicted of a drug offense, 25% of blacks, and 12% of non-Hispanic whites.

In recent years much attention has also been devoted to discussion of the federal crack/cocaine sentencing disparities. As a result of mandatory sentencing legislation passed by Congress in 1986 and 1988, crack cocaine offenses are punished far more harshly than powder cocaine crimes. Whereas the sale of 500 grams of powder cocaine results in a mandatory five-year prison term, only 5 grams of crack cocaine is required to trigger the same mandatory penalty. Since crack cocaine is manufactured from powder cocaine these sentencing policies create a set of odd consequences. For example, a major dealer in powder cocaine who is apprehended with 499 grams of the drug will receive at most one year in federal prison. But when those 499 grams are converted to crack and distributed at the street level, someone possessing just five grams will receive a mandatory five years in prison.

The racial disparities created by these policies have been dramatic, and have resulted both from the sentencing legislation and law enforcement practices. In 1995-96, for example, 86% of persons charged with crack trafficking offenses in the federal system were African American, while blacks represented just 30% of persons charged with powder cocaine offenses.<sup>13</sup> Federal prosecutors have often contended that the high numbers of black crack prosecutions reflect the proportions of large-scale traffickers in crack, who qualify for federal prosecution because of their substantial role in the drug trade. Data analyzed by the U.S. Sentencing Commission, though, cast doubt on this contention. In the Commission's analysis of crack defendants in 1992,

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<sup>13</sup> United States Sentencing Commission, 1996 Sourcebook of Federal Sentencing Statistics, Table 29.

only 5.5% of the defendants were classified as high-level dealers, while 63.7% were considered street-level dealers or couriers, and 30.8% were mid-level dealers.<sup>14</sup>

The ways in which the racial disparities in the prosecution of drug offenses come about are complex. Overall drug use by African Americans is not substantially different than for other demographic groups. Household surveys conducted by the Substance Abuse and Mental Health Services Administration have found that blacks represent 15% of monthly drug users, roughly comparable to their 13% share of the national population. For drug selling, there is no means of estimating precisely whether African Americans are more engaged in these activities than other groups, although a National Institute of Justice analysis of drug transactions in six cities found that “respondents were most likely to report using a main source who was of their own racial or ethnic background.”<sup>15</sup>

A report issued by the Wisconsin Policy Research Institute, for example, assessed differences in the white suburban drug markets and inner-city black and Hispanic neighborhoods of Milwaukee.<sup>16</sup> While drug dealing was prevalent in each of the communities, the inner-city sales tended to be neighborhood-based, often taking place on street corners. In contrast, the suburban distribution of cocaine and other drugs took place by word of mouth through contacts at work, bars, athletic leagues, and alternative cultural events such as “raves.” Suburban sales locations were more hidden from law enforcement than were those in the inner city neighborhoods, but they were “not very difficult to locate,” in the words of the author.

Most criminal justice observers believe that these disparities have emerged as a result of the underlying assumptions behind the “war on drugs.” Unlike crimes such as murder or armed robbery where it is clear that a strong law enforcement response is immediately necessary, drug crimes offer a range of policy options by which to respond, with increased law enforcement representing just one choice

A justification that is often presented for the heavy law enforcement presence in low-income communities is that these communities have distinguishing characteristics in regard to drug sales. In many such communities drug sales are more likely to take place in open air drug markets, in contrast to middle-income communities where they are more commonly conducted behind closed doors. Thus, in the low-income communities, drug use is both more disruptive to community life as well as providing an easier target for law enforcement.

From this point of view, the disproportionate impact of the “war on drugs” on minority communities might appear somewhat reasonable. The problem with this assumption, though, is that the available policy options are *not* to just make drug arrests or to do nothing. Rather, a whole range of family and community interventions could plausibly address substance abuse problems. These would include support for pre-school families, job creation, community-based policing, expanded treatment options, and other services. A consistent body of research has

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<sup>14</sup> United States Sentencing Commission, Cocaine and Federal Sentencing Policy, February 1995, Table 18.

<sup>15</sup> K. Jack Riley, “Crack, Powder Cocaine, and Heroin: Drug Purchase and Use Patterns in Six U.S. Cities,” National Institute of Justice, December 1997, p. 1.

<sup>16</sup> John M. Hagedorn, “The Business of Drug Dealing in Milwaukee,” Wisconsin Policy Research Institute, June 1998.

demonstrated that treatment interventions for substance abuse are far more cost-effective than continued reliance on an expanded prison system. The Rand Corporation, for example, has estimated that investing an additional \$1 million in drug treatment programs would reduce fifteen times more serious crime than expanding the use of mandatory prison sentences for drug offenders.<sup>17</sup>

Despite these and similar findings federal drug spending through both Republican and Democratic administrations since the early 1980s has emphasized the back-end responses of law enforcement and incarceration over the front-end approaches of prevention and treatment. Approximately two-thirds of the current \$16 billion federal allocation for anti-drug spending is designated for law enforcement purposes, a proportion that has held steady for fifteen years.

By choosing to focus primarily on law enforcement and incarceration, therefore, policymakers have implicitly chosen an approach that both worsens racial disparities in the criminal justice system and is demonstrably less effective in responding to the problem of drug abuse than other options. This approach has not necessarily been consciously adopted with the intent of locking up more black males, but in the failure to anticipate its likely consequences, policymakers have contributed to such an outcome.

### **Intended and Unintended Consequences**

The stated intent of policies that result in large-scale incarceration is to respond to and control crime. While the decline of crime in recent years has been cited by some as due in part to the rising number of people in prison, the evidence in this regard is ambiguous at best. Proponents of greater incarceration point to the 17% decline in crime since 1992, at a time when the prison population rose by 51%, as evidence that prisons reduce crime. But in the seven years just preceding this, the prison population rose by 79%, yet crime rates *increased* by 17%. Looking over a broader time frame, the nearly six-fold increase in the prison population from 200,000 in 1973 to 1.2 million in 1997 has not had any dramatic impact on crime overall. In a 1993 analysis, the National Research Council asked what impact the tripling of time served for violent crime had between 1975 and 1989, and answered, “Apparently, very little.”<sup>18</sup> Other factors in recent years that have been coincident with the increased prison population – a decline in the drug trade, efforts to remove guns from juveniles, the expansion of community policing, a growing economy –are much more likely explanations for recent drops in crime.

While much attention has been focused on the relationship between incarceration and crime, comparatively little analysis has been conducted on what might be termed the unintended consequences of large-scale incarceration of the sort that is now quite prevalent in many African American communities. That is, are there family and community dynamics that come into play once the scale of incarceration reaches a certain threshold?

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<sup>17</sup> Jonathan P. Caulkins, et al, *Mandatory Minimum Drug Sentences: Throwing Away the Key or the Taxpayers' Money?*, Rand, Santa Monica, 1997, p. xxiv.

<sup>18</sup> National Research Council, *Understanding and Preventing Violence*, National Academy Press, Washington, D.C., 1993, p. 6.

One area of inquiry relates to the effect of imprisonment on deterring crime. It is generally assumed that since people fear the prospect of going to prison, some may refrain from crime as a result. But what happens to that deterrent effect as the experience of prison becomes quite pervasive in a community? Since going to prison is now a commonplace event in some neighborhoods, the prison experience may come to be seen almost as an inevitable part of growing up for many black males and one over which many individuals believe they have little control.

While the impact of imprisonment on individual offenders is direct, there are also a set of consequences for the families and communities of offenders. These will vary significantly depending on the individual and the offense. Removal of a violent offender who is terrorizing a neighborhood brings some level of public safety to a community. But what about removing large numbers of property or drug offenders? Some modest reductions in crime may be achieved but negative consequences may ensue as well.

One effect of the high rate of incarceration of African American males has been to contribute to the declining number of marriageable men in the African American community. Along with high rates of homicide, AIDS-related deaths and other factors, this has created a substantial imbalance in the male-female ratio among adult African Americans. Whereas gender ratios for African Americans at birth are about 102-103 males for every 100 females, by the age range 40-44, this declines to 86 males per 100 females, whereas white rates are 100:100 for this group.<sup>19</sup> Further, men who have been imprisoned or are likely to be so are hardly strong marriage prospects.

The large-scale reach of the criminal justice system also may interfere with the informal mechanisms of crime control that exist in varying degrees in all communities. This dynamic involves the influence of families, schools, religious bodies, and other institutions to transmit values and promote positive role models. Neighborhoods with high levels of joblessness and social disorganization may be less able to have parents and neighborhood leaders assert the type of influence that would bring greater social cohesion in more well-off neighborhoods.

The negative consequences of high rates of incarceration may well extend to the next generation of children. Children whose parents are imprisoned may develop feelings of shame, humiliation, and a loss of social status. This may lead to acting out in school and a distrust of authority figures. The changing economic circumstances of families experiencing imprisonment may also lead to greater housing relocation and transitory populations, resulting in less cohesive neighborhoods. In far too many cases, these children may come to represent the next generation of offenders.

The impact of the criminal justice system on communities goes beyond issues of well-being and family stabilization, but to issues of political influence as well. One of the most significant areas in which this emerges regards voting rights. As a result of laws that disenfranchise felons and ex-felons in various states, an estimated 1.4 million African American males, or 13% of the black male adult population, is either currently or permanently disenfranchised as a result of a

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<sup>19</sup> David T. Courtwright, "The Drug War's Hidden Toll," *Issues in Science and Technology*, (winter 1996-97): 73.

felony conviction.<sup>20</sup> In fourteen states, a felony conviction can result in lifetime disenfranchisement, and in seven of these states, an estimated one in four black males is permanently disenfranchised. Thus, not only are criminal justice policies contributing to the disproportionate incarceration of African Americans, but imprisonment itself then reduces the collective political ability to influence these policies.

### **Projections for the Future**

With crime rates having declined for the past six years, one might have thought that prison populations would have also begun to decline. Common sense would suggest that with fewer crimes being committed, there would be fewer offenders to be locked up. In fact, though, nothing of the sort has happened, with both the total national prison population as well as the number of incarcerated African American males having risen by about 40% during this six-year period.

The primary reason why these institutional populations have continued to increase is due to increasingly harsh federal and state sentencing policies. The establishment of these policies also suggests that absent any change, the number and proportion of African American males under the supervision of the criminal justice system is likely to increase over the next ten years and that racial disparities will grow even wider. These increases can be anticipated for several reasons.

First, it is likely that the prison population overall will continue to grow in coming years. A survey of state corrections agencies found that state officials projected that the 1994 prison population would rise by 51% by the year 2000.<sup>21</sup> Despite falling crime rates, a variety of sentencing policies adopted in the past fifteen years are contributing to the burgeoning of the prison population. These include the mandatory sentencing laws now in effect in all fifty states and the federal system, the “three strikes and you’re out” laws in nearly half the states, and newly-adopted “truth in sentencing” policies that will increase the time served in prison for many offenders by requiring that they serve 85% of their sentence. Preliminary indications of this trend are already evident in research by the Bureau of Justice Statistics, which show that the percentage of sentence served prior to release increased from 38% in 1990 to 44% in 1996.<sup>22</sup>

With African Americans representing half the national prison population, any increase will clearly affect them in a substantial way. It is likely, though, that the racial disparities we observe today will actually worsen as prison populations rise, primarily due to the impact of drug policies. As we have seen, drug arrests and prosecutions represent the most significant change in the criminal justice system since the early 1980s. These policies have disproportionately affected minorities. To the extent that drug offenders continue to comprise a substantial portion of the inmate population it is likely that the African American share of the prison population will grow as well.

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<sup>20</sup> Jamie Fellner and Marc Mauer, “Losing the Vote: The Impact of Felony Disenfranchisement Laws in the United States,” Human Rights Watch and The Sentencing Project, October 1998.

<sup>21</sup> Amanda Wunder, “Prison Population Projections,” *Corrections Compendium*, March 1995.

<sup>22</sup> Paula M. Ditton and Doris James Wilson, “Truth in Sentencing in State Prisons,” Bureau of Justice Statistics, January 1999.

None of these developments are preordained, of course. Most criminal justice officials now recognize that prison populations represent public policy choices as much as they do crime rates. Thus, decisions regarding which types of offenses should represent priorities for prosecution, what sentencing options exist for judges, and legislative policies regarding sentencing and time served in prison will all play a significant role in determining the size and composition of the prison population.

In assessing future trends in crime and the criminal justice system it is critical to engage in a broad and proactive perspective. As we have seen, the contention that there is a coming wave of “superpredators” on the horizon has little basis in reality. Even if this were true, though, one can consider the policy options that it presents. The predicted coming generation of hard-core criminals would be primarily composed of boys who are five-years old today but who would be believed to develop into high rate offenders ten years from now. A society that anticipated these developments has one of two means by which to respond. It could begin a massive prison construction program designed to have sufficient space to house these high rate offenders when they unleash their projected crime wave. Or it could invest in a variety of family, community, and school-based programs designed to reduce the prospects that this crime wave would take place. It would seem that only a society with an extremely bleak view of the future would choose the former course in public policy.

### **Approaches to Reducing Racial Disparities in the Criminal Justice System**

Since racial disparities in the criminal justice system arise from a complex set of circumstances, there are no "quick fix" solutions to the problem. Only a multifaceted approach can respond to many of the underlying social and economic forces that have contributed to the current situation. Nevertheless, within the criminal justice system, there are a variety of policy and programmatic changes that could have a direct impact on the scale of incarceration and the degree of racial disparity within the prison system. In order to accomplish this, it is first necessary to establish a framework for such change. This would include the following:

- *Jurisdictional commitment to reducing disparity.* Efforts to reduce disparity will only succeed if there is a jurisdiction-wide commitment to address the problem. Otherwise, efforts to reduce disparity at one point in the system may be offset by countervailing actions within other components of the system.
- *Coordinated efforts by relevant actors.* Approaches to reducing disparity require a coordinated effort by all the relevant actors in the system, including law enforcement, prosecution, defense, judiciary, corrections, probation and parole.
- *Public safety focus.* Approaches to reducing racial disparity should not be inconsistent with improving public safety and, in fact, generally represent rational public policy on crime control. Thus, any proposals to reduce disparities should also assess the crime control impact of the proposed changes.

Specific recommendations for change can be considered in the areas of legislative change, criminal justice officials' initiatives, and criminal justice/community partnerships. The following is a suggested means of promoting efforts to reduce racial disparities.

## 1. Legislative Actions

### ➤ Reconsider Mandatory Sentencing Policies

Mandatory sentencing policies, particularly for drug offenses, have contributed to the escalating number of minorities in prison. While these policies have proved to be politically popular, they have also resulted in the incarceration of many low-level offenders at great expense. A vast body of research, as well as practitioner perspectives, suggest that mandatory sentences are unnecessary for crime control purposes and have a variety of negative consequences. Repeal of mandatory sentencing laws would thus provide one of the most significant steps that could be immediately undertaken in this regard.

In the current absence of political will to repeal mandatory sentencing, several interim reforms can be considered by policymakers to lessen the negative impact of these policies:

- *"Safety valve" provisions.* Recognizing the impact of mandatory sentencing on low-level federal offenders, in 1994 Congress adopted a "safety valve" that grants judges wider discretion for offenders who have limited criminal history and no involvement with violence. This has resulted in four thousand offenders a year being sentenced to a shorter prison term than would otherwise have been possible. Congress could now consider an expansion of the "safety valve" to a broader category of offenders, as could state legislatures.

- *Restore practitioner discretion.* Criminal justice leaders in a number of jurisdictions have utilized their discretion to avoid some of the excesses of mandatory sentencing while providing effective responses to offenders. The Drug Treatment Alternative to Prison program developed by Brooklyn, N.Y., District Attorney Charles Hynes, for example, diverts drug offenders facing mandatory prison terms into long-term residential treatment programs. Recidivism rates for offenders completing the program are considerably below those of comparable offenders sentenced to prison.

- *Sunset legislation.* Given the controversy regarding the effectiveness of mandatory sentencing, legislatures could adopt sunset provisions that would result in the laws expiring after a set period of time unless renewed. Such a provision would thus require a legislative review of the effectiveness of any legislation and would permit appropriate modifications.

### ➤ Equalize Penalties for Crack and Powder Cocaine

The racial disparities that have resulted from the federal sentencing distinctions for crack and powder cocaine offenses have been well documented. The 100:1 quantity disparity has contributed to the disproportionate number of African Americans in prison as well as causing great resentment in the black community. Equalizing penalties for the two drugs at

the level of cocaine offenses would reduce some of the racial disparities in incarceration as well as some of the inappropriately lengthy sentences for lower-level offenders.

➤ Develop Racial/Ethnic Impact Statements for Sentencing Policy

In recent years some jurisdictions have required that fiscal impact statements be prepared for any proposed legislative changes in sentencing policy. Similarly, legislatures could require that projections be developed to estimate the racial/ethnic impact of sentencing legislation prior to its adoption. Such a policy would not prohibit legislatures from adopting new sentencing legislation, but would allow policymakers to assess whether any unwarranted disparities might result. This would aid in consideration of alternative crime control measures that could produce effective results without undue disparities.

➤ Establish a Goal of Reducing the Non-Violent Offender Population by 50% Over Ten Years

Non-violent property and drug offenders now constitute 53% of state prison inmates, an increase from 45.5% of the total in 1986. Nationally, this represents more than a half million inmates and a total cost of incarceration of more than \$10 billion. Legislatures could adopt a policy goal of reducing this population by 5% a year for ten years, using the funds saved on imprisonment for community-based supervision and treatment programs.

➤ Increase Funding for Indigent Defense and Sentencing Advocacy

To the extent that minorities in the criminal justice system are disproportionately low-income, they do not obtain the advantages that wealthier defendants bring to the system. These include access to attorneys with reasonable caseloads, sentencing consultants, and diagnostic services. Greater provision of these services would aid courts in fashioning more appropriate sentencing options for many low-income offenders and would likely result in diversion from prison for some minority offenders.

2. Criminal Justice Officials' Initiatives

➤ Expand Drug Policy Options

Criminal justice officials are increasingly recognizing the importance of providing drug treatment as a component of effective sentencing and corrections policy. Drug treatment might reduce the number of minorities and others in prison in one of two ways: by diverting offenders to treatment programs rather than incarceration and, by reducing drug addiction and therefore, recidivism. Options in this area include drug courts, prosecutorial diversion programs, in-prison residential treatment, and other approaches.

➤ Expand the Use of Alternative Sentencing

A variety of alternative sentencing programs have been developed in recent years. These programs include community service, day reporting centers, victim-offender mediation, and a variety of substance abuse treatment programs. While the experience of these programs in reducing prison populations is mixed, they hold the potential to divert offenders from a prison sentence while addressing both offender and victim needs in an effective manner.

➤ Monitor Alternative Sentencing Programs to Assess Racial Balance

In many jurisdictions, white offenders are more likely to be sentenced to probation and alternative sanctions than are minority offenders. This may be due to relevant factors such



as crime severity and criminal record or to system bias. Jurisdictions can attempt to monitor the racial/ethnic composition of offenders sentenced to alternatives to determine whether minority offenders are appropriately represented and if not, to conduct an analysis of the reasons for disparity.

### 3. Criminal Justice/Community Partnerships

#### ➤ Increase Community-based Diversion from the Criminal Justice System

Many young and first-time offenders are stigmatized by their contact with the criminal justice system, without necessarily receiving either appropriate supervision or support. Opportunities exist to divert many of these offenders to individuals and organizations which can better focus on problems that are most effectively handled in a community setting. These could include mentoring programs, counseling, tutorial support, and other options.

#### ➤ Strengthen the Link between Communities and the Justice System

The experience of community policing in recent years has demonstrated that a “problem-solving” approach to crime can be effective in increasing public safety while also building valuable links to the community. Variations on this model are now being explored by prosecutors, probation departments, and other components of the system. These approaches hold the potential of both increasing minority confidence in the justice system and building on community strengths to promote public safety.

### Conclusion

The origins of the crisis of African American males as it regards the criminal justice system extend far back in the nation’s history. Unfortunately, despite admirable progress in reducing racial bias in many areas of society during the past several decades, the overrepresentation of black males in the justice system has clearly worsened.

While the situation is urgent in many regards, there is some reason for cautious optimism. Support for change in criminal justice policies and programs has been growing in recent years. The introduction of drug courts, prison-based treatment programs, and community policing are all indications of public and policymaker support for problem-solving responses to individual and community crises. In addition, many communities are now engaged in locally-based programs that provide support to young people. These include mentoring programs, recreational activities, and personal skills development. The challenge for the community at large is to engage in broad discussion of the mix of family, community, and government initiatives that can begin to reverse the cycle that has been set in motion in recent years.

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