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Reducing Racial Disparity in the Criminal Justice System

A Manual for Practitioners and Policymakers

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The Sentencing Project is a national non-profit organization which promotes sentencing reform and the use of alternatives to incarceration through program development and research on criminal justice issues. The Sentencing Project's research has addressed the causes and consequences of racial disparity, as well as practical responses to these problems.

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Reducing Racial Disparity in the Criminal Justice System: A Manual for Practitioners and Policymakers

The problem is one which builds along the criminal justice continuum of arrest through parole rather than the result of the actions of any one single agency. Therefore, in order to combat unwarranted disparity, strategies are required to tackle the problem at each stage of the criminal justice system. And each component of the system requires unique strategies depending on the degree of the disparity and the specific populations affected.

- Charles Austin, Chief of Police, Columbia, S.C.

We cannot run society for the privileged and allow a significant proportion of the population to be marginalized. It impacts the quality of life for all of us if we have “throw away” people. A justice system which tolerates injustice is doomed to collapse.

**- Leonard Noisette, Director,
Neighborhood Defender Service of Harlem, N.Y.**

We, as a country, are confused about what we are trying to achieve with the criminal justice system. The public needs to be moved away from the idea that the criminal justice system can provide “the” answer to crime. Indeed, our responses to crime often exacerbate the problem. Criminal justice agencies in a local jurisdiction must collaborate to get the proper message to the public and collectively say, “this is what we can do, this is what we cannot do” and then concentrate on improving the system - particularly in the area of reducing racial disparities which result from our collective decision-making.

**- I. Matthew Campbell, Assistant State's Attorney,
Ellicott City, MD.**

Reducing Racial Disparity in the Criminal Justice System: A Manual for Practitioners and Policymakers represents the product of a collaboration among leaders from all components of the criminal justice system. Staff of The Sentencing Project convened an advisory committee composed of criminal justice leaders who provided information, participated in group discussions, and reviewed drafts of the manual. In addition, staff and consultants interviewed a broad range of criminal justice practitioners nationally to solicit ideas and analysis.

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Reducing Racial Disparity in the Criminal Justice System

INTRODUCTION

While the impact of incarceration on individuals can be quantified to a certain extent, the wide-ranging effects of the race to incarcerate on African American communities in particular is a phenomenon that is only beginning to be investigated.

What does it mean to a community, for example, to know that three out of ten boys growing up will spend time in prison? What does it do to the fabric of the family and community to have such a substantial proportion of its young men enmeshed in the criminal justice system? What images and values are communicated to young people who see the prisoner as the most prominent pervasive role model in the community?

What is the effect on a community's political influence when one quarter of the black men in some states cannot vote as a result of a felony conviction?

Marc Mauer, *Race to Incarcerate*¹

As we enter the new millennium, America has become the most racially diverse and wealthiest nation on the planet. Our gains in economic prosperity, however, are not uniformly shared across society as whole segments of American communities have become marginalized - seemingly unimportant to society at large. One fundamental aspect of this marginalization is the disparate treatment of persons of color which occurs incrementally across the entire spectrum of America's criminal justice system. This disparity, rarely a result of clear-cut decisions to provide unfair treatment, threatens to produce in communities in every city and state an unhealthy and counterproductive distrust of the criminal justice system. And a society that cannot trust its institutions to protect the people and treat them fairly cannot effectively control the crime that we rightly fear.

Many people working within the criminal justice system are acutely aware of the problem of racial disparity and would like to counteract it where they can. The purpose of this manual is to present information on the causes of racial disparity and to examine what players in the justice system can do to reduce disparity at each decision point in the criminal justice process, understanding that the disparity is symptomatic of problems in society as a whole. The manual is the outcome of vigorous process of group discussion and interviews with practitioners in every part of the criminal justice system and a review of many of the best practices and policies in effect in jurisdictions nationwide.

The manual begins with an overview of the causes of racial disparity and how these are manifested in the justice system and in the societal views and values it reflects. However, the manual's central focus is on the specific ways in which such disparities may result from decision-making at various points in the criminal justice process, and the steps that can be taken by criminal justice agencies to counter those effects. It is designed as a desk book for practitioners, offering a methodology for assessing racial disparity and guidelines on practices, procedures and policies at each stage of the system to reduce it.

¹ Marc Mauer, *Race to Incarcerate* (1999, New York: The New Press), p. 12.

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What is Racial Disparity?

Racial disparity in the criminal justice system exists when the proportion of a racial/ethnic group within the control of the system is greater than the proportion of such groups in the general population. (Throughout this manual, we will use terms such as “racial groups” and “minorities” interchangeably, with an understanding that many, but not necessarily all, of the dynamics of the criminal justice system apply to various racial and ethnic groups.) The causes of such disparity may be varied and include differing levels of criminal activity, law enforcement emphasis on particular communities, legislative policies, and decision making by criminal justice practitioners who exercise broad discretion in the justice process.

Illegitimate or *unwarranted* racial disparity results from the dissimilar treatment by the criminal justice system of similarly situated people based on race. In some instances this may involve overt racial bias, while in others it may reflect the influence of factors that are only indirectly associated with race.

There are four key aspects to addressing racial disparity in the criminal justice system:

- 1) The problem of racial disparity is one which builds at each stage of the criminal justice continuum of arrest through parole, rather than the result of the actions of any single agency.
- 2) In order to combat unwarranted disparity, strategies are required to tackle the problem at each stage of the criminal justice system, and to do so in a coordinated way. Without a systemic approach to the problem, gains in one area may be offset by reversals in another.
- 3) Each decision point and component of the system requires unique strategies depending on the degree of disparity and the specific populations affected by the actions of that component.
- 4) Systemwide change is impossible without informed criminal justice leaders who are willing and able to commit their personal and agency resources to measuring and addressing racial disparity at every stage of the criminal justice system, and as a result, for the system as a whole.

Addressing racial disparity in the criminal justice system is entirely consistent with a commitment to public safety and to a fair system of justice. If unwarranted racial disparities can be reduced, the justice system will gain credibility and serve a more effective role in preventing and responding to crime.

Reducing Racial Disparity in the Criminal Justice System

The Impact of Racial Disparity

Statistics from communities and the nation as a whole show evidence of the impact of racial disparity at all levels of the criminal justice system. These disparities often have a cumulative effect, whereby decisions made at one stage of the system contribute to increasing disparities at the following stages. For example, if bail practices result in similarly situated minorities being detained before trial at greater rates than whites, they will also be disadvantaged at trial and sentencing by having less access to defense counsel, community resources, and treatment options. Disparities in the system can be seen in the following:

- The widely-discussed phenomenon of “driving while black” illustrates the potential abuse of discretion by law enforcement. Traffic stops recorded on Interstate 95 in Maryland over a two-year period revealed that African Americans represented 70 percent of drivers stopped and searched by police, while only 17.5% of all drivers – as well as speeders – were black.
- A New York state study found that minorities charged with felonies were more likely to be detained than whites. The researchers concluded that 10 percent of minorities detained in New York City and 33 percent in other parts of the state would have been released prior to arraignment if minorities were detained at the rate of comparably situated whites.²
- 46 percent of prison inmates and 42 percent of jail inmates are African American, compared to their 12 percent share of the overall population.
- Hispanics constitute 18 percent of the prison population and 16 percent of the jail population, compared to their 12 percent share of the population.
- A black male born in 1991 has a 29 percent chance of spending time in prison at some point in his life, a Hispanic male 16 percent, and a white male 4 percent.

While the primary focus of this manual is on decision-making within the adult criminal justice system, the impacts of racial disparity are clearly seen in the juvenile justice system too. While African American youth represent 15% of their age group within the general population, they represent:

- 26% of juvenile arrests
- 31% of referrals to juvenile court
- 46% of waivers to adult court
- 58% of juveniles sentenced to adult prison³

Racial disparity challenges the basic values upon which the criminal justice system rests. To the

² *Disparities in Processing Felony Arrests in New York State: 1990-1992*, Office of Justice Systems Analysis, New York State Division of Criminal Justice Services, September 1995.

³ Eileen Poe-Yamagata and Michael A. Jones, *And Justice for Some: Differential Treatment of Minority Youth in the Justice System*, Building Blocks for Youth, April 2000.

extent that such disparity is a result of racism (that is, discrimination based on race), it represents an outright rejection of the principle of equal justice. A commitment to values of justice, fairness and public safety compels professionals to vigorously address disparate treatment when and where it exists. A sense that the criminal justice system is fair is essential to the functioning of a democratic society. Thus, there must be a nexus between societal values and personal values: fairness and a commitment to due process is an absolute societal and personal dictum. Without this commitment, confidence in the rule of law erodes.

For example, since the police are the gatekeepers to the criminal justice system, fundamental mistrust and suspicion of police destroys the partnership between law enforcement and the community at the most direct contact point between the public and the system. Thus, pro-active approaches to building trust between law enforcement agencies and communities is essential. Law enforcement and criminal justice agencies must publicly communicate their recognition of the fact that a racially imbalanced system will have a negative impact on families, communities and the larger society. In order for a democratic society to function effectively, communities must support law enforcement as an essential ingredient to good government. Law enforcement agencies must work in an organized and very public fashion to instill that trust.

Similarly, the willingness and commitment of citizens to understand and respect the sentencing process is highly dependent on a sense that the system reflects societal values. In recent years, the criminal justice system has often served as a focal point for community frustration about racial problems in the larger society. For this reason, it is vitally important that unwarranted racial disparities be addressed aggressively and publicly.

Reducing Racial Disparity in the Criminal Justice System

Section I THE CAUSES OF RACIAL DISPARITY

This manual discusses the specific ways in which racial disparities may result from decision-making at various points in the criminal justice process, and suggests steps that can be taken by criminal justice practitioners to counter those effects. These decision-making points provide an opportunity for professionals to ensure that a person of color is treated fairly. It is important to recognize, however, that the criminal justice system operates within a larger social and political context that affects both its operation and the position of racial minorities as they come into that system. Criminal justice professionals have the capacity to counter disparity in several ways: as citizens they can seek to influence the political process; as professionals within the system they can work together for systemic change; and as decisionmakers they can exercise discretion to offset the impact of racial disparity, whether it results from a larger social or political context or previous decisions within the system. Thus, criminal justice professionals will find an awareness of the wider social context advantageous in developing strategies to ensure that their decisions within the system help reduce racial disparity.

As described in this section, the wider social context and systemic causes of racial disparity include higher crime rates, inequitable resources, legislative decisions and overt bias:

Higher Crime Rates

Racial data for the commission of crime is unavailable as most crime is not reported and the perpetrators remain unknown. The most extensive statistics available are for the race of people arrested. Victimization surveys in which victims are asked to identify the perpetrators of crime are consistent with arrest data for many offenses. Arrest rates for some offenses suggest that African Americans are disproportionately involved in particular types of crime. For example, about 45% of arrests for violent crime and about 30% of arrests for property crime are of African Americans. (The rate of arrest of Hispanics is not measured.)

However, when looking at arrest rates it is important to remember the context in which arrests are made. Arrest rates are essentially an indicator of police activity in clearing crimes reported to them and crimes they observe themselves. Thus, they reflect the frequency with which crimes are reported, police decisions regarding offenses on which they will concentrate their attention and their resources, and the relative vulnerability of various crimes to arrest. Despite these limitations, crime statistics are consistently used as a measure of the degree of offending among different groups in the population.

Issues of both race and class impact the likelihood of involvement with the criminal justice system and treatment within the system. Poor people generally are over-represented at every stage of the criminal justice system and people of color are also disproportionately poor.

Policing policies which take a zero-tolerance approach to minor violations of law have been

disproportionately targeted at inner-city black and Hispanic populations. Policy and practice regarding plea negotiations and sentencing are shaped by public opinion, defendants' access to resources for effective defense, as well as their access to alternative means of treatment and problem-solving. Therefore, the fact that official statistics consistently show poor and minority persons to be overrepresented among those arrested and convicted by the system must be tempered by the realization that these groups are the ones most lacking in the resources needed to avoid arrest and criminal justice punishment.

Further, individuals and communities with access to resources generally employ an approach to dealing with behavioral problems outside the juvenile and criminal justice systems. For example, middle class parents who have a child who is disruptive in school or engages in delinquent acts will explore the contributory role of learning disabilities, psychological problems or substance abuse with appropriate social service or health care professionals. They will engage private tutors, counseling and therapeutic services to remedy the problems they find. In the event of an arrest, they will typically deploy as many resources as possible as an alternative to further involvement in the juvenile or criminal justice systems.

The apparent overrepresentation of African Americans and other minorities involved in crime does not fully explain their overrepresentation in America's jails and prisons:

- In an examination of the overall racial composition of the 1991 state prison population, criminologist Alfred Blumstein concluded that 76% of the higher black rate of imprisonment could be accounted for by higher rates of arrest for serious offenses.⁴ The remaining 24% of disparity, Blumstein stated, might be explained by criminal histories and other factors such as racial bias.
- While these statistics held true for most crimes, the critical exception was drug offenses. African Americans constituted 15% of drug users in 1998,⁵ only slightly higher than their percentage in the population. However, African Americans represent 37% of those arrested for drug offenses, 53% of drug convictions, and 56% of drug offenders in prison.⁶
- A related examination of incarceration data by leading sociologists 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.⁷ In the

⁴ Alfred Blumstein, "Racial Disproportionality of U.S. Prison Populations Revisited," *University of Colorado Law Review*, Vol. 64, No. 3 (1993).

⁵ *Summary of Findings from the 1998 National Household Survey on Drug Abuse*, Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (1999).

⁶ These are the most current figures available from the Department of Justice but are for different years: use-1998; arrests-1998; convictions-1996; inmates-1997.

⁷ 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).

northeast states, only 69% of racial disparity in incarceration 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, these data suggest that a variety of factors, which include crime rates, law enforcement practices, and sentencing legislation, play a role in the degree of racial disparity in incarceration.

Another factor that may explain 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 is also a function of race, geographic location and other factors. Disruptive and misbehaving youth from middle class neighborhoods have fewer arrests than similar youth from neighborhoods whose principal resources are the juvenile and criminal justice systems.

These factors may be compounded by law enforcement and criminal justice policies. For example, the disproportionate incidence of arrests of minority drivers for the “offense” of “driving while black” in recent years demonstrates the racial profiling through which members of minority groups may be more likely to enter the criminal justice system than similarly situated white drivers. This may result in a disproportionate number of blacks being arrested for non-violent drug crimes and acquiring a criminal record, as well as the sense of anger and humiliation which brought this practice to public attention.

A recent study of juvenile arrest, detention and incarceration rates found that, even adjusting for criminal history and seriousness of offense, minority youth were more likely than white youth to be detained, formally charged, transferred to criminal court and incarcerated.⁸ Having established a criminal record at an early age, both the likelihood of their future involvement in the system and the likelihood of receiving harsher punishments are increased. Another study has documented the complex interaction among several variables – race, sex, age and employment – in contributing to disparities.⁹

If law enforcement resources are heavily focused in poor neighborhoods, if public safety strategy is limited to arrest and prosecution, if the indigenous organizations in the community are denied a voice in deciding how these problems should be addressed, and if there is seriously insufficient commitment of economic, educational and social service resources that might provide assistance and hope to the residents, this dimension of the racial disparity problem will simply grow worse.

⁸ Eileen Poe-Yamagata and Michael A. Jones, *And Justice for Some: Differential Treatment of Minority Youth in the Justice System*, Building Blocks for Youth, April 2000.

⁹ Cassia Spohn and David Holleran, “The Imprisonment Penalty Paid by Young, Unemployed Black and Hispanic Male Offenders,” *Criminology*, Vol. 38, No. 1, 2000.

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Inequitable Access to Resources

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 are also a function of differing forms of treatment that relate to the background and resources of the offender.

Analyses of youthful offending 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.¹⁰ Decisions regarding the most effective balance of responses by law enforcement, social services, and community intervention are critical in determining many of the outcomes. These often reflect broad policy decisions regarding economic investments in particular communities, provision of adequate educational and employment opportunities, and access to health care and treatment programs. As discussed above, the inequitable access to resources can result in very different outcomes for middle class and poor children with similar behavioral problems.

Once the decision has been made to rely on the criminal justice system as the primary response to social problems in poor minority communities, the day-to-day actions of practitioners are constrained by that decision. For example, police make more drug arrests in low-income neighborhoods because those communities are not provided with other options for dealing with drug problems.

Within the criminal justice system the allocation of resources can have a compounding effect on defendants as they move through the system. This can manifest itself in some of the following ways:

- Bail and pretrial release screening instruments and release policies may have biases toward middle class values and resources - for example, an early release system that utilizes electronic monitoring which requires a telephone in the home will eliminate this pretrial release option for impoverished defendants.
- Prior to sentencing, resources necessary to treat addictions, consult with psychologists, or hire expert witnesses and investigators are often unavailable through public funding and so multiply the disadvantages for indigent defendants of any race. Public defenders with high caseloads may not be able to develop individualized alternative programs or sentencing options.
- A defendant who comes to court for sentencing directly from lock-up may be disheveled or angry, and viewed as a prisoner. Another defendant who has the resources to avoid pretrial detention will arrive well dressed and may be able to show a record of seeking treatment or other services prior to trial. These differences can lead to post-conviction disparities, where the “prisoner” remains in prison, and the “free” defendant remains free.

¹⁰ See, for example, Delbert Elliot, “Serious Violent Offenders: Onset, Developmental Course, and Termination - American Society of Criminology 1993 Presidential Address,” *Criminology* 32, No.1, 1994.

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The Legislature

Legislatures at the federal, state and local levels literally create the criminal justice system by passing laws that define prohibited behavior, the penalties to be imposed for violating those laws, and the processes by which cases are to be disposed and sentences are to be determined. Even county and city legislatures frequently pass local ordinances that are enforced by the police and the criminal courts. Many of these laws have a disproportionate impact on minority communities, which could have been foreseen before the laws were passed.

For example, by significantly increasing penalties for drug trafficking, especially for trafficking in crack cocaine, while lowering the weight of the drug required for charging felony possession with intent to sell, and mandating imprisonment for such a conviction, legislative drug policy has heavily affected minority communities. Moreover, given the nature of the crack versus cocaine marketing system, it should have been obvious that enforcement efforts would concentrate on the former rather than the latter, and that the crack markets were more visible and vulnerable in the neighborhoods of the minority poor.

Had these predictable effects been identified and considered by the legislatures, different responses to the drug problem might have been developed. Representatives of the communities most likely to be affected might have been actively engaged in thinking through a more comprehensive, less damaging, and more effective strategy for addressing the problem. More reasonable distinctions between minor and major drug offenses might have been enacted. A range of alternative responses to minor offenders, including drug treatment, might have been established. The discretion required to distinguish between dilettantes and professionals in the drug trade might have been left to the courts, which explore the actual circumstances of the offense and the histories of the offenders. Public financing, committed in enormous amounts to policing and corrections, might have been made available in significant amounts for education, prevention, and treatment programs in the communities where the problem was most pronounced.

The political furor over crime during the last fifteen years has driven legislatures to pass ever-more punitive laws resulting in enormous growth in prison and jail populations. The vast majority of inmates are people of color, and as a whole they have been offered little in the way of training, education and meaningful drug treatment during periods of incarceration. This enormous increase in the use of jails and prisons has taken place without persuasive evidence indicating that incarcerative strategies are the only, or even the most effective, approach to controlling crime.

This suggests the need for legislatures to treat proposed criminal legislation with the same care many now accord to other legislation such as laws that will affect children's education or the environment. Thorough legislative impact analyses would identify probable disproportionate racial impacts and signal the need to seek alternative problem-solving strategies to eliminate or significantly lessen such effects. Indeed a *requirement* to perform such analyses would slow the legislative rush to simple punishment, provoke a more deliberative strategy development process, and encourage extensive and effective use of the range of public and private resources for assuring public safety.

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Overt Bias

So long as racism exists within society at large, it will be found within the criminal justice system. Racism fuels the overt bias which can show in the language, attitude, conduct, assumptions, strategies and policies of criminal justice agencies. Instances of overt bias can lead in turn to the improper use of discretion which is at the core of much of the problem of racial disparity. Certainly, in the past two decades, much of the overt racist language and attitudes once common in many parts of the system are now considered out of bounds and have all but been eliminated in public settings. However, out of the ear of the public, racism may still flourish behind the scenes. The need to address racism wherever it manifests itself is a key and basic component in reducing racial disparity.

Bias in the criminal justice system may take many forms. In policing, it can manifest itself in police-community interactions and the degree of respect and consideration that law enforcement displays to the public. In the courtroom, the way in which minority defendants or attorneys are addressed can communicate attitudes suggesting second-class status. Prison officials' interactions with families of inmates can also either aid in community-building or increase levels of resentment.

Criminal justice practitioners, like others, are likely to identify with those who look and act like them. Thus, judges and prosecutors may be more receptive to consideration of pretrial or sentencing options for defendants with whom they feel some connection. This is likely to hold true for all racial and ethnic groups. Understanding these dynamics reinforces the necessity to maintain a diverse and representative system of justice so as to more equitably meet the legitimate needs of all persons in the system.

Many observers suggest that overt bias in criminal justice decision-making has declined dramatically in the last couple of decades, and that racial disparity is essentially a consequence of policies, strategies, and decisions that unintentionally and indirectly produce disparate effects. While much of the research that has been conducted in the recent past tends to support that belief, racist attitudes persist among some people in all American institutions. For example, the U.S. Supreme Court recently set aside the death sentence in a Texas case in which the offender's Hispanic origin had been presented by the state as an indicator of likely "future dangerousness" -- an aggravating factor pointing to death rather than life in prison as the appropriate punishment. An audit by the Texas attorney general's office found eight other cases that "may be similar" regarding testimony in capital punishment sentencing of blacks and Hispanics.¹¹

Guarding against such racist attitudes among criminal justice operatives is especially important, both because of the expectation that they must always act justly, and because they are so often called upon to exercise coercive authority over the citizenry. Therefore, there can be no relaxation of training in human relations, of orientations to the cultures and subcultures of the people with whom the criminal justice agents interact daily, and of supervisory oversight designed to detect and correct bias in the attitudes, speech, and behavior of subordinate personnel.

¹¹ *Saldano vs. Texas*, 99-8119. Texas Attorney General's office, quoted by the Associated Press, June 5, 2000.

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Section II MANIFESTATIONS OF RACIAL DISPARITY AT KEY DECISION POINTS IN THE CRIMINAL JUSTICE SYSTEM

The criminal justice system can be seen as a process consisting of a series of points at which system personnel make decisions that result in introducing a person to the system, continuing or discharging that person from the system, and determining what will be done with the person while under supervision. Decision points range from police decisions regarding the enforcement of specific laws through parole decisions to terminate state supervision of an offender. Virtually all of these decisions permit at least some discretion to the decision maker. The exercise of that discretion can produce racial disparity to the extent that the factors that influence the decision have a disproportionate impact on particular racial groups.

It is neither desirable nor possible to eliminate discretion throughout the criminal justice system since much of the system is based on the judgment of the professionals involved in day-to-day decision making. What is needed is an introspective look at the substance of discretion and to find ways to either curb inappropriate uses, such as through the development of standards to guide its use, or to use discretion affirmatively to reduce racial disparity. It is helpful, therefore, to identify the decision points where discretion is exercised, the system actors who participate at each stage, and the ways in which the decision may produce a disparate impact. In doing so, there are several generic questions that can be asked of the decision-making process at each point, including:

- Are these decisions likely to have a disproportionate impact on one or more racial groups?
- Can the objectives sought be pursued by other means that might eliminate or lessen the disproportionate impact?
- Do the factors influencing these decisions provide an opportunity for intentional or unintentional bias?
- How can those influences be eliminated or moderated to lessen the disproportionate impact?

Enforcing the Law

The police are the first and most visible agents of the system. In addition to their general order maintenance functions, they are charged with responding to crime complaints, monitoring citizens' behavior in public places to discourage law violation, intervening with warnings, referrals, or arrests when such violations are suspected or observed, and assembling evidence for the prosecution of cases resulting in arrest. These enormous responsibilities require the police to make strategic decisions about the kinds of offenses and offenders that will be given priority attention, and the distribution of police resources across neighborhoods, days of the week and time of the day. In addition, police agencies must make tactical decisions about how their resources will be deployed to implement the agency's priority objectives. The strategies and tactics for addressing those problems result in according greater attention to some problems than others, concentrating police

resources in some neighborhoods rather than others, and employing more intrusive tactics in some areas than others. Thus, the strategic and tactical decisions of the police often have a disproportionate impact on particular groups within their jurisdictions.

There is a tendency to assume that the police are the sole participants in their own strategic and tactical decision-making. In fact, those decisions are subject to review and approval by the executive branch of government, including the office of the prosecutor, and frequently subject to positive or negative reactions from the legislative and judicial branches. In well-organized suburban communities, groups of residents and business people often work with the police in formulating these strategic and tactical decisions and reviewing their effects. This type of community involvement tends to be less evident in urban areas, especially in the neighborhoods of the poor. However, in recent years, the advocates of community policing have insisted that such involvement should be the norm, and have worked with police agencies and community organizations to foster it.

Especially in ethnically diverse areas, police officers are often working in areas that are culturally quite different from that with which they are familiar. Yet most training programs offer only general sessions on diversity and ethnic sensitivity. In the absence of a more specific orientation to the language, norms, values, traditions, and major institutions of the communities in which they work, officers will have difficulty understanding the needs and attitudes of the residents, and in communicating with them effectively. Moreover, they are more likely to interpret the words and actions of people as insulting or rejecting of their authority, and they are more likely to speak and act in ways that are perceived as disrespectful by the people in the neighborhoods. These circumstances may adversely affect the officer's discretionary decision-making, and may lead to a sense of mutual alienation between the police and the community.

In the last several years, many departments have increased the use of "stop and frisk" tactics, especially in high crime areas. Regular patrol or special tactical officers will stop and question persons they perceive to be acting suspiciously, and often "pat down" the person for weapons. The tactic is intended to make the police presence felt in the area, and is believed to have a deterrent effect on conventional forms of street crime. In addition, the tactic does produce arrests for illegal weapons, outstanding warrants, and other offenses.

On the highways, road patrol officers often stop people for apparent traffic violations, and use the occasion to search the vehicle for drugs. These "pretext" stops have become a matter of considerable concern in several states based on the belief that people of color are grossly over-represented among those stopped. A recent report by the State Attorney General in New Jersey has confirmed that suspicion, and set forth an elaborate plan for developing training for State Troopers in their use, the recording of data on all stops including the racial identity of the driver, the grounds for suspicion leading to the stop, and the action taken by the police officer pursuant to the stop. The plan also calls for regular monitoring of the database for evidence of disproportionate impact on various racial and ethnic groups.

In New York City, the extensive use of pedestrian stops has produced widespread complaints from residents of predominantly minority neighborhoods. These complaints led to an extensive investigation by the State's Attorney General, which discovered considerable statistical evidence of

minority over-representation among those stopped, and anecdotal evidence of the intrusive and often insulting nature of these stops. The Attorney General's report committed to work with the Police Department and other interested parties to review, and modify if appropriate, the Department's guidelines for use by police officers in implementing such stops, and for police managers in monitoring their use.

In assessing whether and how police actions might contribute to racial disparity in the system, and what might be done to correct it, the following questions should prove useful:

- Is the strategic decision to focus attention and resources on particular types of crimes or disorder likely to have a disproportionate impact on racial minorities?
- If so, are there alternative ways of addressing that problem that will lessen the negative impact on minorities?
- Are representatives of the affected communities involved in considering the strategy and its alternatives?
- Are these representatives willing and able to support and cooperate with the strategic activities decided upon?
- Are the agency's guidelines for responding to calls-for-service, stopping and frisking suspicious persons, and formally arresting a suspect clear and understood by the officers? Have they been examined for the possibility of inadvertent racial bias? Do they highlight and point to alternatives to arrest in situations where arrest is not mandatory?
- Are representatives of the affected communities given an opportunity to understand and comment upon the enforcement tactics used?
- Are police officers given an effective orientation to the residents, organizations, and cultural characteristics of the neighborhoods in which they work, in order to reduce misunderstandings between them and the residents, and to sharpen the officers' ability to distinguish between activities and conditions which are and are not problematic in that community?
- Is the interaction between officers and residents in minority neighborhoods subject to close and effective supervision to assure compliance with the agency's guidelines?
- Is there a known, accessible, and credible complaint mechanism available for citizens who wish to register a grievance regarding police behavior? Is the agency able to monitor complaints so as to identify patterns that may reflect disproportionate racial impacts associated with particular strategies, tactics, organizational units, or neighborhoods?
- Are supervisory and command personnel held accountable for the misbehavior of their subordinates?

Reducing Racial Disparity in the Criminal Justice System

Arraignment, Release, and Pre-Adjudicatory Decisions

Between the time a suspect is arrested and the time he or she is arraigned, a number of important activities take place where decisions are made that can have a dramatic effect on the racial composition of the criminal justice population. This critical stage in the processing of a criminal case is rendered more complicated because multiple players are involved, including: the police, the complainant, witnesses, the prosecutor, the suspect, the suspect's family and friends, the pretrial officer, the defense, diversion and alternative sanction programs, and the court.

A reasonably careful review of the charges and the evidence by the police may result in a decision to void the arrest by declining to bring charges. Immediate consideration of the charges, evidence, and the arrest event by the prosecutor and the police helps to determine the decision to prosecute on specific charges, and to set parameters for plea negotiations.

In some jurisdictions, large proportions of misdemeanor cases are disposed and given non-incarcerative sentences at arraignment. The absence of a pretrial services program has often led to an assumption that bail should be set in *all* but capital cases, and that the bail amount should simply reflect the seriousness of the charge. Such assumptions discriminate against poor persons and result in unnecessarily high rates of detention. Detention, in turn, increases the likelihood of conviction and incarceration.¹²

Early involvement of defense counsel facilitates the attorney's understanding of the case, counseling the client, and initiating as early as possible appropriate plea negotiations with the prosecution. A careful review of options at this point can result in a decision to defer prosecution on condition that the defendant participate successfully in a program of supervision and treatment. Alternatively, the case may be transferred to a special purpose court with sufficient resources to fashion a disposition and sentence that best imposes accountability, supervises behavior in the community, and provides meaningful opportunities for the defendant to change his or her lifestyle.

In assessing how minority defendants might be disadvantaged at this stage in the case disposition process, and what might be done to correct the racial disparity, the following questions should be helpful:

- Is the defendant represented by competent counsel at the arraignment?
- Does the defendant have the benefit of a pretrial assessment, and is the assessment conducted according to the best professional standards?
- Do the prosecution and the court accept the fact that it is the defendant's risk of flight and risk of pretrial offending, not the seriousness of the unproven charge, that is at issue in making the bail/release decision?

¹² E. Britt Patterson and Michael J. Lynch, "Bias in Formal Bail Proceedings," in *Race and Criminal Justice*, Patterson and Lynch, eds., Harrow and Heston, 1991.

- Do the factors considered in assessing such risks impact negatively and disproportionately on poor, minority defendants? If so, are there other factors that would be equally effective predictors of risk, or can the risk level be checked by specific supervisory conditions on release?
- Are there diversion and alternative dispositional alternatives available to the prosecution and the court at this stage?
- Are the factors which influence the decisions of the prosecution, or the court, to offer or accept diversion or alternative sanctions likely to have a disproportionate impact on racial minorities? If so, can they be replaced by other considerations?
- Are representatives of minority communities informed about the nature of the pre-adjudicatory process, and encouraged to assist in identifying and developing resources that can be used by the court as elements in pretrial release, diversion, or alternative sanction programs?
- Do the police, pretrial services, prosecution, defense, courts, and community services adequately understand each other's roles in this stage of the process, and are there adequate structures and procedures to foster effective interaction among them?

Reducing Racial Disparity in the Criminal Justice System

Adjudication and Sentencing

This stage of the criminal justice process begins with the continuance of a case beyond arraignment and ends with the disposition and imposition of sentence. Since the vast majority of criminal cases are disposed by plea, assuring that minorities are not disadvantaged in the process is critical. This assurance is just as important in the lower courts as it is in the higher trial courts. Misdemeanor level crimes, which typically account for a majority of criminal cases, are brought to disposition and sentence in the lower courts. Although the sentences imposed in these courts are generally less severe than those imposed in the higher courts, a conviction becomes part of the defendant's criminal history and can lead to more severe treatment in subsequent cases. Moreover, because the cases are more numerous and the sentences less severe, less time and fewer resources are generally available for fashioning constructive, non-incarcerative sentences in the lower courts. Finally, attention to the lower court process is important because felony cases typically enter the system through arraignment and motion activity in the lower courts, and may be disposed there as well.

More serious cases, with a range of more severe penalties in the mix, are handled in the higher courts (often called superior or circuit courts). The vast majority of these cases are also disposed by plea. Thus, it is crucial that the publicly supported defense bar, which usually represents the vast majority of poor, minority defendants, be accorded full and early discovery and be provided with adequate resources for investigators, expert witnesses, and the development of alternative sentencing plans.

It is also essential that community-based service organizations, especially those serving minority communities, be available for use by the courts as components of community-based supervision and service programs, and that they be supported by public funds when providing such services. Similarly, the probation service, which typically prepares pre-sentence reports for consideration by the court, especially in felony cases, should have the training, resources and access to the defendant's community that are required to prepare multi-faceted sentencing proposals that respond effectively to offender need and accountability as well as public safety.

A study of probation presentence reports in juvenile court cases illustrates the means by which racial bias, whether intended or not, may influence sentencing outcomes.¹³ Researchers analyzing the narrative descriptions of juvenile offenders found that probation officers tended to portray the delinquency of black youth as stemming from negative attitudinal and personality traits, while the analysis of the behavior of white youth stressed the influence of the social environment. Black youth were judged to be more dangerous, which then translated into harsher sentences than for comparable white youth.

Finally, in recent years, special purpose courts have been developed to deal with issues such as drug cases, domestic violence cases, and other problems associated with the quality of life. These courts are based on the premise that concentrating the authority of the court on a specific problem enables

¹³ George S. Bridges and Sara Steen, "Racial Disparities in Official Assessments of Juvenile Offenders: Attributional Stereotypes as Mediating Mechanisms," *American Sociological Review*, Vol. 63, No. 4, August 1998.

that court to better hold offenders accountable for their behavior, and to compel their participation in treatment, restitution, community service, and skill development programs. They seek not only to adjudicate and punish, but also to compel activities that can solve or ameliorate the problem in the community and address the needs of the offender for skill development and drug treatment. There is a concern that these courts will bring people into the criminal justice system whose problems would be better addressed outside it, and that they will consume resources that could be more effectively used in the community. However, once the decision to adjudicate a case in court has been made, it is important to assure that the factors used to determine a defendant's eligibility for transfer to these "specialty" courts do not inadvertently discriminate against racial minorities.

In assessing how minority defendants might be disadvantaged at this stage in the case disposition process, the following questions should be helpful:

- Are publicly supported counsel assigned at or before the arraignment of the case?
- Do the rules of the court provide for full and timely discovery so as to enable effective defense participation in plea negotiations?
- Is there a range of community-based sentencing alternatives available in the lower and superior courts?
- Are organizations serving minority communities given sufficient access to the courts and to the public funds that support alternative sanction programs?
- Is the publicly supported defense bar provided with adequate resources to participate effectively in the trial, plea negotiations, and sentence negotiation processes?
- Have the courts, prosecution, defense, and probation service reviewed the factors that influence bail decisions and plea and sentence negotiations, including sentencing guidelines where they exist, so as to satisfy themselves that these processes are not inadvertently biased against members of racial minorities?
- Are there special purpose courts operating in the jurisdiction? Do minority defendants have effective access to them? Have the process and factors used to determine eligibility for transfer to these courts been reviewed to eliminate inadvertent racial bias?
- Does the probation service have an adequate understanding of, and access to, the defendant's community so as to involve community resources in the sentencing plan?

Reducing Racial Disparity in the Criminal Justice System

Probation and Community Supervision

While the number of jail and prison inmates has exploded in the last two decades, the number of offenders sentenced to probation has also grown dramatically. Persons of color, especially African-Americans, are disproportionately represented in both groups, but they are less likely than white offenders to receive a community corrections sentence. While part of the explanation for this may lie in an analysis of offense, convictions and criminal history, it may also be because the probation service and consequently the courts, are less familiar and less comfortable with the ethnic communities from which these defendants come. As a result, court officials may not recognize positive, neighborhood residents and resources in the defendant's life that could make constructive contributions to his supervision and treatment in the community.

This social and cultural distance between the probation service and the community may result in fewer recommendations for probation, or in supervision and sentencing plans that are less comprehensive and relevant to the defendant's life than they could be. In some jurisdictions, there are growing numbers of faith-based organizations and not-for-profit service organizations that are reaching out to the courts and to probation departments to serve as supervision and service agents for defendants given non-incarcerative sentences by the courts. This is a trend that should be encouraged both to reduce the current level of reliance on incarceration for minority offenders, and to enhance their opportunities for adopting a law-abiding lifestyle. Thus, probation departments should be encouraged to decentralize their investigative and supervisory resources to the communities where probationers are concentrated, in order to increase their understanding of the local culture, and their interaction with local organizations and institutions. Such decentralization would also enable probation officials to assist the local service organizations to connect with the courts, to understand what is expected of them when participating in alternative sanction programs, and to develop the capacity to comply with those expectations.

Violations of probation have contributed significantly to the increase in jail and prison populations. When a violation is a consequence of committing a new and serious offense, incarceration is often mandatory. However, when the new offense is a non-violent, low-level misdemeanor, or when the violation is a consequence of the offender's inadequate compliance with the conditions of probation, the decision to return the case to court and to seek an incarcerative sentence is often discretionary on the part of the probation officials. Thus, it is important that policies governing these discretionary decisions be put in place and reviewed to determine if and how they might have a disproportionate impact on minority offenders. Moreover, there is a critical need to develop a range of graduated sanctions which can be invoked by probation officers in response to non-compliant behavior by the probationer. In the absence of such a range, the probation official must choose between simply ignoring the behavior, which may be interpreted as accepting it, and returning the offender to court for re-sentencing.

In assessing how minority defendants might be disadvantaged in regard to receiving and successfully completing sentences to community corrections, the following questions should be helpful:

- Have probation officials reviewed the factors and processes that influence their sentencing recommendations, and satisfied themselves that they do not inadvertently impact negatively on racial minorities? Have representatives of minority communities participated in that review, so as to point out how certain factors may be misinterpreted to the disadvantage of minority defendants, and how those misinterpretations might be corrected?
- Does the probation service have an effective connection to the communities from which significant numbers of offenders come, in order to understand the local culture, identify local resources that could be effectively incorporated into a community correction sentence, and assist local organizations to connect to and meet the expectations of the courts?
- Have probation officials developed a range of graduated sanctions to use in response to non-compliant behavior by probationers?
- Have these officials explained these sanction options, and the criteria for using them, to the satisfaction of the courts, prosecution, defense, and community service agencies involved in the supervision process?
- Does the probation service maintain effective communication with the probationer's counsel so as to involve him or her in encouraging the probationer's compliance with the conditions of probation?
- Is the probation service provided with sufficient resources to perform the supervision and treatment function effectively, especially in the communities of the minority poor?

Reducing Racial Disparity in the Criminal Justice System

Jail and Prison Custody

African American and Latino minorities comprise a dramatically disproportionate share of those in jail and prison. It is hoped that this situation will change in the years to come, and that the suggestions offered in this manual will help to bring that change about. While the removal of certain offenders from the community clearly has beneficial effects, there is increasing evidence of the damage experienced by minority communities when such a large percentage of their residents are incarcerated. Efforts must be made to reduce the violence, isolation, and boredom that typically characterize our jails and prisons, and to convert them into reasonably safe environments where inmates may receive the education, treatment, and skills training that will prepare them for law-abiding lives and employment upon their release.

The internal atmosphere in jails and prisons tends to be intense and often confrontational. The vast majority of the inmates are African Americans and Hispanics, while the vast majority of the correctional staff are white. Thus, there is often an undercurrent of racial and ethnic tension between the two groups. Similar strains can be found among inmates themselves, and sometimes produce conflicts and violence between race-based gangs within the institution. Prison and jail administrators need to be mindful of this factor, and strive to reduce racial tensions and prevent these inter-group hostilities from hardening into the grist of prison riots.

Inmates are deprived of regular contact with family and friends in the community, which has negative effects on both the community and the inmate. Families often encounter difficulties with respect to housing, finances, and child-rearing. Given their inability to help in such circumstances, inmates experience frustration and a loss of self-esteem. This, in turn, increases their volatility within the institution, and depresses their motivation to use what opportunities are available for treatment and skills development. This vicious cycle almost certainly contributes to the relatively high recidivism rates, especially within the first year of release.

The negative effects of isolation from the community can be eased substantially by establishing effective working relationships between the social services staff of the institution and the human service network in the community. This requires that there are community-based social service workers attached to the institution, and that the public and not-for-profit service agencies in the community are willing and able to take on this additional workload. It also requires that the institution provides opportunities for treatment and skills development. In the last few years, recognition of the need for institutional drug and alcohol treatment programs has been growing, but there is a continuing need to expand and improve them.

Moreover, treatment often ends when the inmate leaves the institution because arrangements have not been made for follow-up services in the community. As prison and jail populations have increased so sharply, the resources available for institutional education, counseling, and skills development programming have not kept up with the increased demand. Indeed, in some jurisdictions such programs have come to be defined as perks, which should not be provided to “undeserving” persons. Such deprivations intensify the problems of prison management, and return

prisoners to the community even less equipped for effective and law-abiding lifestyles than when they were first imprisoned.

In recent years, the number of mentally ill, and mentally ill and chemically addicted (MICA) persons committed to jails and prisons has increased dramatically. These inmates constitute a special challenge for correctional personnel, who often are not trained to understand their behavior and their needs. Recent research suggests that African American inmates tend to be “over diagnosed” in comparison with whites. For example, African Americans tend to be diagnosed as schizophrenic proportionately more often than whites, while the latter tend to be diagnosed as presenting depressive symptoms. The differences in diagnosis may reflect the cultural distance between African American inmates and the generally white personnel in the psychological services positions, and may result in a different assessment of the potential “dangerousness” of the inmate.¹⁴ In any case, the institutions are often significantly lacking in the resources needed to correctly diagnose and treat such people, and to connect them to community-based services upon release. Clearly mentally-ill inmates of all races need adequate services both in prison and back in the community; however, it appears that African Americans suffer most from the deficiencies in the current system.

In assessing how minority defendants might be managed more effectively in jails and prisons, and better prepared to adopt law-abiding patterns of behavior when they return to the community, the following questions should be helpful:

- Does the institution’s administration recognize the persistence of multi-layered racial tensions within the jail or prison, and have they implemented ongoing programs designed to reduce such tensions?
- Is there a system in place to monitor the ratio of minority staff to non-minority staff in order to provide comparisons to the general inmate population?
- Has the administration implemented similar programs designed to defuse internal gang conflicts and the pressure on inmates to affiliate with such gangs?
- Has the administration established a monitoring mechanism to determine if classification decisions are made appropriately and without any racial or ethnic bias?
- Are there social service staff in the institution with sufficient resources to meet regularly with inmates needing their assistance?
- Has the administration established mechanisms that enable the social service staff to work effectively with service networks in the inmates’ communities to help meet the needs of their families and sustain familial relationships during the period of incarceration?
- Is drug and alcohol treatment available for those who need and desire it, and is provision made for transferring the inmate upon release to a treatment program in the community?
- Are these transition programs adequate to respond to the shock of release?

¹⁴. Cheryl M. Paradis, et al., “Ethnic Differences in Assessment of Treatment of Affective Disorders in a Jail Population,” *Journal of Offender Rehabilitation*, Vol. 28, No. 3/4, 1999. Black inmates are more likely to be diagnosed with psychiatric disorders and whites with affective disorders, and blacks with affective disorders are receiving inadequate treatment.

- Are there adequate psychological services for diagnosing, treating and providing for community follow-up for mentally ill and MICA inmates?
- Are there education, counseling, and skills development programs available to prepare inmates for transition to law-abiding behavior in the community?

Reducing Racial Disparity in the Criminal Justice System

Parole Decisions

There are three types of decisions made by parole authorities which bear significantly on the involvement of racial minorities in the criminal justice system. In those states which still use indeterminate sentencing systems, parole authorities decide when offenders will be released from prison to the community. Secondly, these authorities make decisions about the release plan which the offender must follow when he returns to the community. Finally, parole officers monitor the parolee's compliance with those conditions, decide when to violate someone for non-compliance, and pass such cases to the parole commission for a decision on appropriate sanctions, including return to prison.

To determine whether minority offenders are disproportionately the recipients of negative parole decisions and, if so, what factors may be contributing to that condition, the following questions should be useful:

- Are minority offenders denied discretionary parole release proportionately more often than white offenders?
- What are the guidelines that structure such discretionary decisions, and do they contain factors that are likely to impact adversely on minority offenders?
- Do parole authorities make effective use of community service resources in preparing release plans for persons returning to minority communities?
- What are the guidelines that structure parole violation decisions, and do they contain factors that are likely to impact negatively on minority offenders?
- Do parole authorities have available a range of graduated sanctions for responding to parole violations, or must they choose between ignoring the violation and returning the offender to prison?

Reducing Racial Disparity in the Criminal Justice System

Section III A RESEARCH DESIGN TO IDENTIFY AND ASSESS RACIAL DISPARITY

Research can play a critical role in determining the degree to which racial disparity exists in a particular jurisdiction. The evidence may point to a relatively low degree of disparity in some jurisdictions, while in other jurisdictions the need for studied approaches to reduce disparity are apparent. The following framework outlines a means by which jurisdictions can begin a five step process to address this issue by:

- 1) Determining whether the percentage of people of color involved at any stage of the criminal justice system is disproportionate
- 2) Identifying the reasons for any disparity identified and the extent to which it is legitimate
- 3) Assessing the decision points where disproportionate disparities may occur
- 4) Designing and implementing strategies to reduce disparities
- 5) Monitoring the effectiveness of the strategies.

1. Identify Disproportionate Representation

Complete a matrix to determine if criminal justice processing at any stage of the system is disproportionate. Developing such a matrix first involves computing the proportion of persons of color involved at each stage of the criminal justice process (e.g., arrest, pretrial confinement, conviction, incarceration) and then comparing these proportions with the percentage of people of color in the population, and with the percentage of people of color at the preceding stage of the disposition process.

Consider, for example, the hypothetical matrix below which describes a jurisdiction of 250,000 people, 14% of whom are persons of color. Column 1 describes the decision or action by the decision-makers at specific points in the criminal justice system. Column 2 describes the number of persons in the total population affected by these decisions; while columns 4 and 6 break those numbers down by non-minority and minority status. Column 3 shows the total percentage of people from the prior stage affected by the decision, while columns 5 and 7 look at, respectively, the percentage of non-minorities and minorities affected.

For example, Columns 2 and 3 indicate that 20% (5,000) of the total number of arrestees (25,000) were detained; that 95% (23,750) of those arrested were prosecuted; 60% (14,250) of those prosecuted (23,750) were convicted; 70% (9,975) of those convicted (14,250) were given a community correctional sentence, and 30% (4,275) of those convicted were sentenced to incarceration. Column 8 presents the percentage of minority defendants at each stage of the process.

The last column provides an index which shows the relationship between the percentage of minorities at each stage and their percentage in the previous stage. For example, the percentage of arrested persons detained who were minorities (52%) was 1.1 times greater than the percentage of minorities in the total group of arrestees (48%). An index score of 1.0 would indicate that the two percentages were identical, and a score of less than 1.0 would indicate that minorities were under-represented at that stage (as, in this example, among the persons convicted who received community sentences rather than incarceration).

<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>6</i>	<i>7</i>	<i>8</i>	<i>9</i>
<i>Community Population</i>	<i>Total: 250,000</i>		<i>White: 215,000 (86%)</i>		<i>Minority: 35,000 (14%)</i>		<i>Minority Percentage of Total Population Affected</i>	<i>Disparity Index (between current and previous stage of system)</i>
<i>Decision or Action</i>	<i>Total Population Affected by Action</i>		<i>White Population Affected by Action</i>		<i>Minority Population* Affected by Action</i>			
	<i>Number</i>	<i>Percent</i>	<i>Number</i>	<i>Percent</i>	<i>Number</i>	<i>Percent</i>		
<i>Arrest</i>	25,000	10%	13,000	6.0%	12,000	34.0%	48%	3.4
<i>Detain</i>	5,000	20%	2,400	18.5%	2,600	21.7%	52%	1.1
<i>Prosecute</i>	23,750	95%	12,350	95.0%	11,400	95.0%	48%	1.0
<i>Convict</i>	14,250	60%	6,412	51.9%	7,838	68.8%	55%	1.2
<i>Community Sentence</i>	9,975	70%	5,115	79.8%	4,860	62.0%	49%	0.9
<i>Incarcerate</i>	4,275	30%	1,297	20.2%	2,978	38.0%	70%	1.3

* "Minority" refers to: African Americans, Latinos, Asians, Native Americans and other persons of color.

From this table, one can see that minorities are significantly over-represented at each stage of the criminal justice process (column 8). The disparity is most striking at arrest where the percentage of people of color are arrested is 3.4 times their percentage in the total population. At subsequent stages in the criminal justice process, the disparity index is lower but the cumulative effect of the disparities results in 70% of those sentenced to incarceration being people of color. A Disparity Index number of 1.1 at the detention stage, for example, means that an additional 10% of the minority population is detained than would have been the case if the arrest disparity had remained constant.

In constructing this type of matrix to shed light on the issue of over-representation, the base population used may be different from the general population figures used in the illustration. For example, if the focus of attention is on the juvenile justice system, it would be more appropriate to use as a base the at-risk population of juveniles between 10 and 17. Alternatively, instead of using general population statistics as a base for both juvenile and adult arrests, one might use a base of

persons between the ages of 10 and 35, the crime-prone years. In some communities, if the data are available, it would be helpful to complete a separate matrix for each of the groups – African American, Latinos, Native Americans – included in the single “minority” group in this example.

In other versions of this matrix, the Disparity Index may be calculated by comparing the relationship between the percentage of minorities at each stage and their percentage in the total population under consideration. While this provides a good overview of the cumulative disparities throughout the system, it is less helpful in analyzing the specific impact of decisions made at each point within the system which are the focus of this manual.

2. Identify Reasons for Disparity

The matrix will identify the decision points at which disparity exists and estimate the extent of that disparity. The next step is to attempt to identify possible reasons for the various points of disparity.

This exploration must include factors that are appropriate influences in the decisions such as the seriousness of the offense, the nature of the defendant’s criminal history, and the nature and effects of prior criminal sanctions.

To the extent that the data on these factors are quantifiable, statistical regression techniques can be used to control for their influence. To the extent that disparity of outcomes persist, even after the legitimate factors (such as higher crime rates) are taken into account, its roots should be searched for in other areas of policy and discretion.

3. Assess Key Decision Points

Assess the decision points where discretion, policy choices, or resource allocation may contribute to over representation. This can be accomplished by “unpacking” the decision point into the prior decisions that produce it, and assessing the extent to which each of those decisions may have a negative and disproportionate impact on minority defendants. For example, if poor people are not represented by a competent publicly-supported attorney at the appearance at which bail is set, fewer of them may be released on their own recognizance, and the bails set may be higher than they would have been had the defendants been represented. Thus, poor people (who are disproportionately minorities) will be more likely to be detained for failure to post bail.

Exploring the effects of policies and discretionary decision-making may be accomplished by a variety of qualitative techniques including observation of practitioners at work, interviewing them, or bringing several of them together in focus groups to discuss the decisions they make and how they make them. When this effort reveals the influence of a factor which impacts disproportionately on minority defendants, the group of practitioners can then reconsider whether that factor is crucial to the decision, or whether its negative influence can be countered by some alternate form of community supervision.

4. Design and implement strategies

Design and implement strategies to reduce over representation by focusing on the decision points and the discretion or agency policy which may be related to the disparate results.

The previous section of this manual (Section II) looked at the potentially disparate impact of actions and policy at these decision points. The following section (Section IV) will discuss the design and implementation of strategies to reduce disparities.

5. Monitor Effectiveness

Monitor the interventions on a regular basis to determine what is and is not working to reduce disparity. Moreover, regular monitoring is likely to identify influences and potential responses to them that were not recognized initially. In this way, progress can be made incrementally.

In seeking to identify and correct the sources of racial disparity, it is important to remember that systemic change can only be effective if it is implemented throughout the system. Since there will be turnover at the top levels of agency management, it is important that attention to issues of disparity take place at all levels of an organization. While deep-seated beliefs are difficult to change, professional behavior *can* be changed, beginning with a “zero tolerance” policy for overt bias. Overt bias is less likely to manifest itself as long as lines of communication are open. Personal relationships break down stereotypes within agencies and between agencies and communities. Having people of color in leadership and decision-making positions can aid in challenging attitudes and stereotypes. This will often result in a gradual impact on institutionalized attitudes.

Reducing Racial Disparity in the Criminal Justice System

Section IV OPTIONS FOR REDUCING RACIAL DISPARITY

For each of the major components of the criminal justice system, a series of options are offered for local consideration on how to reduce racial disparity. Following a listing of the options, a general discussion is included to aid the reader in understanding more clearly how some of the options may reduce disparity and why they are important.

Law Enforcement

Research and Assessment of Disparity

- Undertake a research process similar to that described earlier in this manual to determine if members of minority groups are disproportionately represented at key police decision points, including:
 - ❖ traffic stops
 - ❖ pedestrian stops and frisks
 - ❖ arrests
 - ❖ access to alternatives to arrest.
- At each point at which such disproportionate representation is evident, initiate a process with department managers and line staff, as well as representatives of minority communities, to examine policies, guidelines, and practices in terms of the contribution they may make to such disproportionality, and to develop effective corrective measures.

Development of Community Policing Approaches

- Initiate a process of transforming the department to a community policing model of service.
- Toward that end, create structures and processes, especially in high crime neighborhoods, designed to encourage the participation of community leaders and residents in defining the major concerns of the community and in designing and implementing problem-solving strategies to address them.
- Use these neighborhood structures and public forums to anticipate racially and ethnically disparate impacts from proposed problem-solving strategies and tactics.
- Institute public feedback forums to sensitize both the public and the police to cultural and racial issues, and to provide opportunities for discussion. From the law enforcement agency perspective, design a “human relations approach” by using Police Advisory Boards to open lines of communication to public; from the public’s perspective, assess how law enforcement strategies are developed to assure that they are the result of an assessment of constructive approaches.

Monitor and Record Data on Traffic and Pedestrian Stops

- Institute concrete measures to monitor and record information regarding traffic and pedestrian stops to ensure that race is not a factor in the decision to stop. These should include recording all stops in terms of the identity of the person stopped, including race/ethnicity, the date, the time and place of the stop, the reason for the stop, the police officer's observations that led to the stop, and the outcome of the stop.
- Provide persons who are stopped with written information regarding individual rights and process for filing complaints.

Develop Alternatives to Arrest

- Encourage service and faith-based organizations in minority communities to develop service programs that may be used by police officers and supervisors as alternatives to arrest and detention in cases in which the police have such discretion. Develop guidelines to help the officers use these alternatives fairly and effectively.
- Engage communities in development of problem-solving responses to local problems, particularly in regard to drug abuse.

Operations and Training

- Develop special orientation training for police personnel working in precincts, or neighborhoods, which contain substantial numbers of minority group members. These sessions should introduce the police to the residents, organizations, and cultural characteristics of the neighborhoods, so as to enhance their understanding of the symbols of respect in that neighborhood, and sharpen their ability to distinguish between activities and conditions that are and are not problematic in that community.
- Develop "early warning" systems to identify officers for whom excessive complaints regarding use of force or misconduct have been filed and initiate remedial action when necessary.
- Focus the attention of supervisors and managers on issues of racial disparity. Teach them to use the departmental database to monitor for instances of apparently racially disparate treatment by their subordinates, and investigate the reasons for such. Make certain that acts of racially disparate treatment are prohibited by and responded to within the department's disciplinary system.
- Ensure that persons promoted into supervisory and managerial positions are sensitive to and educated about issues related to race and race relations.
- Implement personnel evaluation and training programs designed to expand the number of minority group members among the department's management teams.

Undertake Public Education Regarding Approaches to Racial Disparity

- Launch public campaigns, in conjunction with representatives of minority communities, to educate the public and members of the department on the importance of racial sensitivity and fairness in law enforcement and criminal justice, to describe what the department is doing in that regard, and the successes that have been achieved.
- Use the department's budget requests and presentations to highlight the funds needed for and committed to initiatives related to racial fairness and sensitivity, and to insure legislative support for these goals and objectives.

DISCUSSION

Insufficient funding for law enforcement agencies can hinder progress in reducing racial disparity. Adequate attention - which starts with leadership but requires funding - to training, research, investigation and the allocation of officers for community policing, must be provided over time in order to most effectively respond to racial disparity. For example, without fully funded options for law enforcement to use as an alternative to arrest for low level public disorder crimes such as public drunkenness and crimes associated with homelessness, officers on the street have no choice but to arrest or ignore the crime. Options must be in place for discretion to be most productive.

People in low-income minority communities often evince considerable ambivalence on the question of whether they have too little or too much experience with police resources. Whatever the volume of resources committed to a community might be, the critical issue to the residents and organizations is access to opportunities to influence police decision-making and operations. Minority residents will believe that they are better served, and less frequently abused, by police services to the extent that they are involved in the identification of priority problems in the community; in the formulation of strategies and tactics by the police and other relevant agencies to address those problems, in the decision to deploy the resources of the police and other relevant agencies; and in the process of monitoring and assessing the effects of the problem-solving strategies attempted. These collective desires are consistent with the principles of community policing, and should be advocated for by leadership in law enforcement. However, there is much to be learned about how the structures and processes for such integral engagement with the community can be constructed and sustained.

Cultural acclimatization can be part of the effort to strengthen the bonds between the police and the community. In each precinct, or community where minorities are prominently represented, cultural familiarity programs can be constructed for all police personnel (regardless of rank) serving that area. Such programs should be designed and implemented with representatives of the community to: introduce the officers to friendly local faces; orient them to the language, culture and traditions of the community; introduce them to representatives of local institutions that can assist them in their work; identify the kinds of problems about which residents are most concerned, and the kinds of police tactics that are considered unnecessarily intrusive; explain to them styles of speech and interaction that are considered respectful and those which are considered insulting. Such orientations can be valuable to police officials who are otherwise exercising discretion in an unfamiliar context, where they do not know the people, the place or the culture. They can also help to reduce the

officers' sense of distance from the community and their belief that the residents look on them with hostility, as shown in Vera's research on community policing in New York.¹⁵

Perhaps more than in any other agency, police conduct follows policy and strategy; in other words, agency policy, or lack thereof, dictates how line officers are expected to act in given situations. Therefore, policy decisions made by law enforcement can be expected to have an effect on line officers in daily contacts with the public. In regard to drug policy, for example, a decision made to focus police attention on street-corner drug use and sales could have differing impacts. It could be viewed by a community as support in combating a neighborhood problem, or as a hostile move aimed at removing young men and women from the community. Likewise, police officers might view the community as either one besieged by a handful of criminals or as a drug-infested "problem." The best check against ill-formed policy, strategy or tactics is for police officials to develop and review them in concert with representatives of the communities in which they will be implemented.

Police use of discretion has received much attention in recent years on the issue of "racial profiling" in traffic and pedestrian stops. Efforts to address the problem of racial profiling can begin with documentation of the problem through data collection. Police officials in San Diego and New Jersey, for example, now require the race and ethnicity of all persons stopped by the police to be recorded, along with other information that is routinely collected, and the President has directed all federal law enforcement agencies to collect data of this kind. These data will help to determine whether, where, and when stopping practices are disparate and thereby point to practice that needs correction. Moreover, they can help identify areas where modification in policies, guidelines and training is needed.

The Bureau of Justice Assistance reports that as of mid-year 1999, ten of the nation's 49 state law enforcement agencies whose primary duties include highway patrol required officers to record demographic information on the driver or passengers of all traffic stops. Thirty two State agencies reported specifically collecting racial or ethnic data on drivers who receive traffic-related citations.¹⁶

At least one jurisdiction (Prince George's County, Maryland) has implemented a practice that at certain types of traffic stops a brochure is provided that describes the individual's rights and indicates who the individual would address a complaints to, as well as the officer's business card

Leadership and supervision are key – including second-tier supervisors overseeing behavior on the street. The line supervisor's role is crucial as guide and coach and supervisors need to be prepared and trained for their role. Field training officer status should only go to experienced and demonstrably "good" officers. The training officer should have high status and be held accountable for the behavior of his/her subordinates.

¹⁵ Jerome E. McElroy, Colleen Cosgrove and Susan Sadd, *Community Policing: The CPOP in New York*, Sage Publications, 1993.

¹⁶ K. Strom and M. Durose, *Traffic Stop Data Collection Policies for State Police, 1999*, Department of Justice, Bureau of Justice Assistance, February 2000.

Police agencies can introduce early warning systems – a certain number of complaints about use of force or other misconduct would trigger an initial internal investigation. Aggregate individual statistics feed into unit behavior statistics and lead to individual and unit accountability. Indeed, accountability systems for police managers have been receiving a great deal of attention lately, driven by the success of the COMPSTAT system in New York City. Such systems should be required to track patterns of racial disparity and civilian complaints. When police commanders are required to answer for their subordinates' sins of omission or commission, they will concentrate on correcting them.

Best Practices: Law Enforcement

AGENCY: New York City Police Department; South Bronx Precincts
CONTACT: Robert C. Davis, Vera Institute of Justice
ADDRESS: 377 Broadway, New York, NY 10013 **PHONE:** (212) 334-1300 (Mr. Curry, Publications)

INITIATIVE: Respectful Policing Practices

GOAL: Reduce overall crime by including enforcement of Quality of life offenses such as public drinking and vandalism as part of the so-called Broken windows theory of policing without an increase in citizen complaints against the police.

BEST PRACTICE: Through aggressive and clear leadership and the introduction of thoughtful police policies which define protocols for police interaction with citizens, avoid the widespread relationship between a decrease in crime in poor and ethnically diverse neighborhoods and an increase in citizen complaints for police misconduct.

DESCRIPTION: Serious crime in New York City has declined dramatically since 1990, which some observers attribute in part to the introduction of a new set of police strategies beginning in 1994 which centered on the enforcement of Quality of life offenses such as public drinking and vandalism as part of the so-called Broken windows theory of policing. The number of civilian complaints against the police rose dramatically after 1993. These two trends of crime and complaints, moving in opposite directions, have led many to speculate that the inevitable price of a drop in crime is an aggressive police force that generates more citizen complaints.

However, two police precincts in heavily minority neighborhoods the Bronx, New York showed an overall *decrease* in citizen complaints during a time when the incidence of crime was reduced. For all other precincts in the Bronx, as the crime rate was reduced, citizen complaints escalated. The Vera Institute of Justice performed an investigation of the causes of this phenomena and refuted the speculation that a decrease in crime must result in an increase in citizen complaints. The researchers examined in detail the levels of crime and civilian complaints and examined a variety of possible explanations for the decline in civilian complaints.

The researchers concluded that the most likely explanation for the decline in citizen complaints against the police in these two precincts is the effective manner in which the precinct commanders implemented departmental policies. Although they adopted contrasting styles of management, both commanding officers improved the way that precinct personnel were supervised and community relations. They ensured that department-wide training was reinforced with training within their precincts. They administered departmental monitoring programs for recidivist officers with zeal, attaching real consequences to the receipt of civilian complaints. They paired younger officers displaying attitude problems with more experienced officers. In sum, the commanding officers in these two precincts took common departmental policy and used it to further their visions of how police ought to interact with the public.

IMPACT: An overall reduction in crime: index crimes in the city dropped 50% between 1990 and compared to a 24% decline in other large cities; and a reduction in citizen complaints: 54% and 64% below 1993 levels while citywide complaints increased by 39%.

MATERIALS AVAILABLE Robert C. Davis and Pedro Mateu-Gelabert, *Respectful and Effective Policing: Two Examples in the South Bronx*, Vera Institute of Justice, March 1999.

Best Practices: Law Enforcement

AGENCY:	Portland Police Bureau	Multnomah Co. Dept. of Juvenile Community Justice
CONTACT:	Captain A. Kirkland	Rick Jensen
ADDRESS:	1111 SW Second Avenue Portland, Oregon 97204	1401 NE 68th Avenue Portland, Oregon 97213
PHONE:	(503) 823-0038	(503) 988-5698

INITIATIVE: Receiving Center for Juveniles operated by New Avenues for Youth

GOAL: Provide a community resource for street-kids who commit infractions of non-detainable rules such as breaking curfew and need services due to lack of supervision.

BEST PRACTICE: Institute a central intake and assessment process to aid police in the processing of youth who need to be removed from the street; avoid the practice of disproportionately returning white children to their homes while formally processing and detaining children of color.

DESCRIPTION: In the past, the Multnomah County Juvenile Detention Facility was used as a placement option for any youth taken into police custody, regardless of the charge. The other option was to release some misdemeanor/status offenders to their parents or on their own failing parental contact. As a result of these limited options, 62% of misdemeanor/status offenders were detained. Police personnel report that, at the time, there was a tendency to return Anglo children to their parents and to detain youth of color. This was due to cultural unfamiliarity and negative experiences when dealing with the parents of Latino and African American youth.

As part of an overall juvenile justice reform effort in 1992, leaders in the judiciary, law enforcement, community based agencies and local government developed alternative approaches based on research, local data and common sense: youth picked up on non-detainable charges should be diverted from the justice system altogether if possible as a means to reduce the risk of recidivism. One target: the lack of coordination between the law enforcement and community service communities coupled with a limited range of resources which resulted in so many misdemeanor/status offenders being detained at great expense to the youth, their families and the local system. The plan: improve and clarify protocols on the processing of youth, provide extensive training and collaboration with community groups focusing on resource use and cultural sensitivity, and create a broader array of services - particularly a 24 hour-a-day, centralized screening and referral Receiving center for police to use as the primary resource to determine risk/need for youth charged with low level crimes and non-detainable offenses.

Aided by a grant from the Annie E. Casey Foundation, the reform team developed a new system for non-detainable youth which has as its core a Receiving Center operated by a non-profit, community-based organization (New Avenues for Youth), located in a private building in downtown Portland with broad based political support from the justice system stakeholders as well as the business community. The Center is funded by government crime prevention and private foundation dollars.

IMPACT: A 30% reduction in the number of youth brought to secure detention by police; particular impact on youth of color who are now more frequently taken to the Receiving Center than to secure detention.

MATERIALS AVAILABLE: *Juvenile Justice Reform Initiative*; especially Section 7, "Engaging the Police and the Development of an Alternative Receiving Center for Youth"; Multnomah County Dept. of Community Justice, 1999.

Reducing Racial Disparity in the Criminal Justice System

Pretrial

Research and Assessment

- Undertake a research process similar to that described earlier in this manual to determine if members of minority groups are disproportionately represented among those who are:
 - ❖ denied release on recognizance or supervised release
 - ❖ subjected to bail amounts which they cannot post;
 - ❖ denied admission to diversion
 - ❖ deferred prosecution, or alternative sanction programs at this point in the process
 - ❖ detained because of their inability to post bail.
- If such disproportion is evident, initiate a process with front-end decision makers (police, pretrial, prosecution, defense, and court officials), as well as representatives of minority communities, to examine policies, guidelines, and practices in terms of the contribution they may currently make to such disproportionality, and to develop effective corrective measures.

Education and Advocacy

- Make certain that all participants in the pretrial process understand and agree that: the defendant is presumed innocent; he or she is entitled to pretrial release under the least restrictive alternative available; conditions of release, including bail, should be imposed only to reduce the risk of the defendant's failing to return to court (flight), or to reduce the risk to public safety, or both.
- Make certain that a pretrial service capable of assessing the risks of defendant flight, and (as required in some but not all jurisdictions) the risk of public safety posed by release, is available to all defendants after arrest and, if possible, before the arraignment.
- Reach agreement within the jurisdiction about the importance of the early release decision because it will profoundly affect the outcome of the case, and because it is one of the earliest points in the system where significant and important information about the offender is gathered that can be used to make fair and objective evaluations about offender characteristics and risk which are not driven by race, ethnicity, gender or class.
- Make training in pretrial decision making available to all criminal justice officials involved in making or influencing such decisions, including judges, prosecutors, defense counsel, and pretrial program directors, and other human services providers.
- Develop strong bonds with other criminal justice agencies and personnel and with community and advocacy groups for collaboration on public education about the early release decision and issues related to early release.

- Assure that the due process rights of all defendants, including the confidentiality of information voluntarily provided prior to adjudication, are protected in the process of deciding on case diversion, deferred prosecution, or alternative sanction programs following a negotiated plea at this point in the process.
- Assure the participation of community resources such as faith-based institutions and social service programs in developing defendant services that can be used as conditions of release, case diversion, or sentencing alternatives at this point in the process.

Institute Race-Neutral Policies and Procedures

- Develop exemplary protocols for all pretrial decisions using the standards developed by the National Association of Pretrial Agencies (NAPSA) that will reduce the potential for disparity.
- Review interview forms, risk assessment instruments and the recommended options to assure that none discriminate against poor people or minorities and, if they do, to establish alternative means to assure equal treatment.
- When performing the pretrial task of *Information Gathering*, reduce the propensity for racial disparity by instituting policies and procedures which:
 - ❖ Include all defendants held in custody pending disposition.
 - ❖ Prior to the interview, provide the detainee with information about the pretrial interview and release options.
 - ❖ Time the interview prior to initial appearance as a source of information for the bail/release decision.
 - ❖ During the interview determine, in addition to the presence of drug use, treatment involvement and other indications of attempts by the defendant to discontinue drug use such as counseling, AA, etc.
 - ❖ During the records check, distinguish between categories of offenses, i.e. felony vs. misdemeanor, convictions vs. arrests; violent crimes vs. non-violent crimes.
 - ❖ During verification procedures, use extended family and other social contacts (for example, church and other association contacts), in addition to conventional references. Ask for input from defense counsel on these contacts.
- When instituting *Release Assessment Procedures*, include in the design:
 - ❖ An assessment scheme which can check for factors such as employment, residence, and prior record when determining the level of offender risk to the community and the risk of not returning to court (flight). Determine acceptable levels of over-rides to assessment approaches (such as point systems), and provide training on reasons for over-ride. (While an assessment of case strength may be germane to estimating the risk of flight posed by the defendant, it can only be the responsibility of the court, and not the pretrial officer.)
 - ❖ An array of release options that includes non-traditional or non-conventional options such as custody to a church group or a member of the extended family, the use of electronic

- monitoring, etc.
 - ❖ A pretrial report presentation in written form with a staff person assigned to the court for any needed further explanations. This requires significant planning and continual training.
 - ❖ Well-enforced confidentiality standards.
 - ❖ Supervisory oversight on consistency of assessment schemes.
- When performing *Supervision and Follow-Up Functions*, respond to the following issues:
 - ❖ A supervision plan developed with significant contact with other agencies for referral, the development of a written, individualized plan, written standards and violation procedures.
 - ❖ Follow up court notification which includes non-conventional means of contact including the use of a pager or contact through a relative.
 - ❖ During location and return of defendants who fail to appear, obtain proper references to check to validate reasons for non-appearance, e.g., due to hospitalization, etc.
 - ❖ During the regular review of the pretrial population, check to see if defendants' circumstances have changed as part of a systematic review process.
 - Make certain that *Management Information Systems*:
 - ❖ Have a long- term value in the specific data elements that are collected so that the MIS can generate meaningful reports on a regular basis.
 - ❖ Keep complete and meticulous records of defendants who are interviewed, released, monitored, etc. The information should be used to enhance the process of obtaining and assessing information that is important for bail decisions.
 - ❖ Include race as one of the defendant-based data elements so that issues of racial disparity can be monitored regularly.
 - ❖ Examine the data to assess whether the defendant population base is changing and whether the resource needs and availability may therefore be changing.

DISCUSSION

Reaching agreement within the justice system about the importance of the early release decision is one of the most critical steps a jurisdiction can take to reduce racial disparity. The pre-trial release decision is one of the earliest points in the system where significant and important information about the defendant is gathered that can be used to make fair and objective evaluations about defendant characteristics and risk which are not driven by race, ethnicity, gender or class.

The key stakeholders in the criminal justice system and the general public need to know that the only goals of the bail decision are to ensure that the defendant makes all court appearances and to reduce the risk of danger to the community that the defendant may pose if released pending case disposition. Bail is not intended to punish a person who is not yet convicted. Bail is not intended to hold a person who is of no or little risk to flee the jurisdiction of the court or to reoffend while released. Educational messages need to make it clear that decisions of release are founded upon the fundamental right of due process, without prejudice against race, ethnicity, gender, or class. This

is already stated in the Federal and state constitutions and in the release statutes. It should also be a part of the mission statement of every pretrial services agency.

Education should be provided to all criminal justice officials, the community, and the media. Pretrial programs should not wait for a notorious case, one typically involving a person released pretrial who allegedly commits a heinous crime, to become a focus of attention. Pretrial programs should make regular statistical reports available to the public. New programs, such as mental health screening, drug and alcohol treatment referrals, should be announced.

Pretrial agencies need to develop strong bonds with other criminal justice agencies and personnel -- especially law enforcement -- and with community and advocacy groups in order to collaborate on public education about the early release decision and issues related to early release: the importance of offender assessment; the problem of jail crowding; the goals of pretrial release and bail.

An important first step to eliminate the unfairness of the bail system is to disassociate it from financial resources. The American Bar Association, National District Attorneys Association and National Association of Pretrial Services Agencies (NAPSA) all advocate the elimination of commercial bail bonding; NAPSA goes further by also advocating the elimination of all financial bail. This would certainly bring about a more equitable system of pretrial release because the conditions would not be related to a person's financial resources but rather to the risk that the person represents.

A second step is to assure that the mechanism used to assess risk is devoid of any discriminatory factors. Specifically, ascertain that people without permanent employment, or home, or owners of a telephone are not automatically considered higher risks than people with those attributes and possessions. A third step is to use agency databases to assure that the non-financial conditions of release that are imposed do not discriminate on the basis of race, ethnicity, gender, religion or economic means.

Pretrial programs should also recruit persons of color and diverse ethnic backgrounds. Defendants may be more likely to cooperate with such individuals. The instruments that they use and waivers they read to defendants should be in the language that the defendant understands.

Best Practices: Pretrial

AGENCY: Rhode Island District Court
CONTACT: Hon. Albert E. DeRobbio, Chief Judge, Rhode Island District Court
ADDRESS: Dorrance Plaza, Providence RI 02903 **PHONE:** (401) 458-5200
 Representative Maxine B. Shavers (401) 849-1477
 Senator M. Teresa Paiva Weed (401) 222-6625
 Michael Thompson, Council of State Governments (212) 912-0128

INITIATIVE: Rhode Island Statewide Pretrial Agency

GOAL: To create a pretrial release agency to reduce racial disparity in pretrial jail detention.

BEST PRACTICE: Key criminal justice policymakers collaborate to respond to racial disparity found in the pretrial jail population by creating an assessment and supervised release pilot program.

DESCRIPTION: While 14% of the state's population is African-American and Latino, they represent 55% of all pretrial detainees housed in the adult prison system (the only secure facilities administered by the state).

In Rhode Island, lower court judges have little or no reliable information available about a defendant- other than a limited criminal history and a description of the crime charged - before setting bail. Law enforcement officers describe the offense, and defendant information is provided by the defendant or by his attorney, if one can be afforded. No categorical or individual data is available to the judiciary about similar defendants- history of comply-ing with conditions of bail; no entity monitors defendants while cases are pending. The release decision is therefore based more on instinct, intuition and judges- personal experiences with defendants rather than verified, objective information. Options to detention are extremely limited. The broad discretion of the judiciary is not information-based, which makes equity and fairness difficult to achieve. The state's interests for cost effectiveness are also in question: offenders- charged with sexual or violent offenses account for 26% of the state's pretrial detainees while offenders charged with non-assaultive offenses account for nearly 38%.

Key policymakers have agreed to plan and implement a pretrial services pilot program developed within the context of addressing racial disparity. This will include the monitoring of the program's impact on the racial composition of the state's jail population. The program will have two primary aspects: 1) the provision of verified reports that are objective and race-neutral for the court's use in making the bail/release/detention decision and, 2) the supervision of offenders- compliance with conditions of bail and release. A pilot study overseen by a broad based panel of criminal justice, community and minority organization representatives will be used to determine the parameters, policies and processes of the program before it is fully implemented.

This project resulted from over a year's worth of bipartisan meetings among state lawmakers, state agency directors, judges, community leaders, and others concerned about racial disparity in the criminal justice system. The Council of State Governments coordinated these meetings as part of its region wide effort to assist state government officials evaluate measures which might help to address this problem without compromising public safety.

IMPACT: Program staff will analyze relevant data regarding disparity in bail, release and detention and will work with the judiciary to determine the factors that lead to the disparity and act accordingly with program policies, eligibility criteria and options for release, bail and supervision. Legislative leaders have committed to state funding if the pilot can demonstrate significant benefits.

MATERIALS AVAILABLE: Council of State Governments' Issue Paper, *Establishing a Pretrial Services Pilot Program, Rhode Island District Court, 12/18/99*; as well as information on the process of organizing the approach and state representatives involved in the process.

Reducing Racial Disparity in the Criminal Justice System

Prosecution

Research and Assessment of Disparity

- Undertake a research process similar to that described earlier in this manual to determine if minority defendants are treated disparately by assistant prosecutors in terms of
 - ❖ the bail/release request
 - ❖ charging decisions
 - ❖ access to diversion programs
 - ❖ approvals for deferred prosecution
 - ❖ plea offers and sentence requests
 - ❖ access to alternative sanction programs.
- If such disparity is evident, initiate a review of the office's policies and practices to identify ways in which they may inadvertently produce racially disparate results, and to develop appropriate corrective measures.
- Collaborate with other system actors and representatives of minority communities to identify racially disparate criminal justice outcomes, determine the reasons for them, and develop appropriate corrective measures.
- Examine role of race in capital cases from both the perspective of the accused and from the perspective of the assigned counsel. Are capital cases represented by the least prepared and experienced attorneys? Does the race of victim or defendant appear to influence the charging decisions in capital cases? Monitor any unwarranted racial disparities and determine ways to reform the system accordingly.

Collaborate on neighborhood problem-solving strategies

- Identify neighborhoods that produce a disproportionate caseload for the office, and participate in collaborative efforts with other system actors and representatives of minority communities to develop effective strategies for solving the problems that produce the arrests, and to create and support alternative services for appropriate referrals of cases at various points in the disposition process.
- Examine the impact on specific neighborhoods of "get tough" drug policies such as mandatory minimums. What is the basis for such policies? Do these laws have a disparate effect in neighborhoods of color? If so, what is the human side of the statistics? What alternative policies can address the problem of drug abuse while reducing racial disparities?

Develop and Monitor Prosecutorial Guidelines

- Institute workable guidelines for charging, discovery, bail/release requests, plea bargaining and prosecutorial diversion which are race, class and gender sensitive. Utilize American Bar Association and National District Attorney Association standards as a starting point. Such guidelines can help protect the discretionary power of the prosecutor's office. Since standards that are deemed to be race neutral on the surface may in fact produce racially disparate outcomes, these need to be monitored and evaluated on an ongoing basis.
- Examine how administrative practices may need to be modified to avoid disparity: difficulties in communication with victims because they lack telephones or are hard to contact at work or home; language barriers; victims with inflexible work schedules who are unable to attend court appearances, etc.

Engage in Public Advocacy Regarding Disparities

- Take public or private positions against legislation which has historically resulted in disparate treatment of minorities.
- Support the development of standards in other criminal justice agencies for pretrial release and bail.
- Urge the adoption in Continuing Education Programs of curricula around the issues of race relations and the causes and effects of racial disparity.

Encourage Diversity in the Legal Profession

- Take an active role in the recruitment and advancement of attorneys in the local Bar Association who will focus attention on the problem of racial disparity in the criminal justice system.
- Work with local law schools to determine status of minority representation among student body and work to achieve effective affirmative action policies to encourage the recruitment of minority students.
- Work with local law schools to encourage inclusion in Juris Doctor program curricula that sensitize aspiring attorneys to the issues of race and racial disparity.

DISCUSSION

Prosecutors generally have very significant discretion - often statutorily based – which can have a tremendous impact on racial disparity. For example, prosecutors choose whether and what to charge, and their decisions are largely not subject to challenge. As with all discretion, this power holds the potential both for appropriate individualized decision making and for abuse.

One of the most illustrative examples of this discretion is in the area of bail recommendations, where prosecutors exercise broad discretion. Bail decisions - especially in urban centers - are often treated rather automatically; i.e., it is generally assumed that some amount of bail should be demanded in all criminal cases, and the more serious the charge, the higher the bail should be. Policies based on these assumptions invariably hurt poor defendants. The prosecutor's primary purposes at this stage of the criminal justice process are to: 1) determine the best way to encourage the offender to return to court; and, 2) to protect the community from offenses which the defendant may commit while on release. These purposes may not always be clearly thought through on a case by case basis.

Moreover, the efficacy of bail, as compared with other forms of release, in achieving those purposes may not be fully considered. And the use of higher bails intended to detain the defendant may actually be used to force a plea, a purpose that can only be described as “extralegal.” Together, these practices likely will result in detaining many more defendants than is necessary, either in the interests of assuring appearance or in the protection of public safety. Since pretrial detention is highly predictive of post-conviction incarceration, prosecutors must make certain that the bail recommendation is arrived at after careful consideration of a range of release mechanisms to achieve the two purposes of bail. Thus, prosecutors should work with other system actors and community representatives to develop bail/release guidelines that are effective, efficient, and consistent with those purposes.

Policies that encourage full and early discovery for the defense are also important. They may facilitate earlier release of detainees, as well as early exploration of deferred prosecution and non-incarcerative sentencing alternatives. In that minority defendants constitute such a high proportion of those whose cases are processed by the system, they are the most likely beneficiaries of such policies.

While the discretion exercised by prosecutors in individual cases is appropriate and not a function expected to be decided in the public arena, the policies which shape the exercise of that discretion should be open to public input and even periodic review. Toward that end, some prosecution offices are attempting to create meaningful liaisons with local communities both to enhance their understanding of the community's concerns and ways in which the prosecution office can address them, and to enhance the public's understanding of how prosecutors' offices operate. This kind of “community prosecution” may also expand the prosecutor's knowledge and use of local programs that can serve as diversion or alternative sanction mechanisms.

If prosecutors at high levels take a leadership role to advocate change in the way that prosecutorial discretion is used, this may forestall legislative initiatives - such as the institution of prosecutorial guidelines which curb discretion - which may conflict with prosecutors' practical needs. Prosecutors

are thus encouraged to call for and participate in research that provides insight into the impact of prosecutorial discretion, particularly in the area of racial disparity. In some jurisdictions, other agencies such as the judiciary track information relative to the use of discretion of the prosecutor's office. This practice should be encouraged by prosecutors and should be jointly developed in a collaborative spirit.

To monitor the exercise and effects of prosecutorial discretion, prosecutors should collect racial data on bail/release requests, charging, and plea bargaining to make the process more transparent. They can also document decisions of their staff regarding mandatory sentencing – whether they seek the full punishment of the law or reduce or withdraw charges, and if so, to determine the rationale for their decisions. States that have Three Strikes legislation are particularly important sites for such examinations.

The charging decision represents one of the most critical stages of the criminal justice system, with considerable potential for reducing or expanding racial disparity. For example, ostensibly race-neutral standards that consider the “interest of victims in prosecution” as a charging criterion may work against the interests of minority victims. If such victims do not have a telephone at home or a work schedule that is flexible enough to permit time off for meetings with prosecutors or to appear in court, they may appear to some prosecutors to be “less interested” in the case. Or, a standard that considers the “likelihood of conviction” as a criterion may lead to racial biases as well. If, as has been shown in capital cases and some felony studies, cases of black offenders and white victims are more likely to lead to conviction than other victim-offender combinations, then the charging decision may in fact reinforce such biases.

Prosecutors and their staff need to examine the type of discretion available to them with respect to new “specialty courts” such as drug courts, domestic violence courts, and weapons courts to determine what is chargeable and what is divertable, how decisions are made, and whether there is any inappropriate racial impact.

Prosecutors may find it useful to bring together all criminal justice agencies to collaborate on racial disparity issues for periodic meetings regarding system fairness and effectiveness and use these meetings as a forum to discuss internal reforms as well as motivate other agencies to take similar steps. These meetings would include public defenders, the private bar, prosecutorial staff including special prosecution units, police, judges, and victims.

Public education efforts are required because, as elected officials, prosecutors must make their policies and practices understandable to the general public. Visibility and transparency are key to good government, suggesting that prosecutors seek opportunities to meet with citizens to talk about costs, alternatives, programming successes, and the rationale for addressing racial disparities.

Best Practices: Prosecution

AGENCY: Office of the District Attorney, Kings County, New York
CONTACT: Anne Swern, Deputy District Attorney
ADDRESS: Renaissance Plaza, 350 J Street, Brooklyn, NY 11201 **PHONE:** (718) 250-3939

INITIATIVE: Drug Treatment Alternative-to-Prison Program (DTAP)

GOAL: Diverting prison bound, drug addicted offenders into treatment in order to: 1) place them in a better position to resist drugs and crime following treatment, 2) improve public safety by reducing the number of drug addicts who commit crimes, and 3) save incarceration costs.

BEST PRACTICE: Leadership by a prosecutor to divert an offender population from prison which is historically over-represented by persons of color.

DESCRIPTION: The Drug Treatment Alternative-to-Prison program (DTAP) was initiated by the Kings County, N.Y. District Attorney in October, 1990 to target nonviolent predicate felons facing mandatory prison sentences under N.Y. State's Second Felony Offender Law. DTAP's model of coerced treatment requires participants to plead to a felony charge prior to admission to ascertain the certainty of punishment absent treatment retention. Program dropouts are eligible for readmission because research on drug treatment shows rehabilitation as a continuous process rather than a discrete event and therefore requires flexibility. The program is offered to drug offenders and those charged with drug sales and theft to support drug habits. Offenders must have one or more prior felony convictions and history of drug use.

The treatment regimen includes 14-24 months of an intensive, three phase, residential Therapeutic Community treatment: Orientation (insight into drug addiction), Middle-Peer (drug abstinence, elimination of anti-social behaviors, resolution of personal and relationship problems, peer responsibility, community involvement), and Re-Entry (vocational training, job skills, employment, housing, sobriety, relapse prevention). The program was built through a cooperative effort of judges, defense attorneys, probation and parole authorities, and the treatment community under the leadership of the prosecutor.

IMPACT: The program has an aggressive, highly sophisticated, longitudinal evaluation component that employs a quasi-experimental research design. Between October 1990 and October 1999, 3,617 felons were screened with 1096 (30%) defendants accepted in DTAP; 232 were actively in treatment in late 1999. Participants show a very one year retention rate of 66%; 406 participants (37%) completed treatment; graduates have a three year post-treatment recidivism of 23%, less than half of a comparison sample (47%); 92% of employable graduates were working or attending vocational training by October, 1998 - three times the percentage working at intake; 97% of treatment absconders have been returned to court. The program estimates that, without its services, \$14.3 million would have been spent on incarceration, public assistance, health care, recidivism and lost tax revenues. Rearrests for program graduates were for less serious crimes than failures, and less likely to be for a drug related offense. Through October, 1998, 97% of the participants were persons of color; 84% male; with the vast majority coming from impoverished neighborhoods, over half report heroin as their drug of choice.

MATERIALS AVAILABLE: *DTAP; Drug Treatment Alternative-to-Prison Program; Ninth Annual Report;* Office of the District Attorney of Kings County, Charles J. Hynes (1999).

Best Practices: Prosecution

AGENCY: Milwaukee District Attorney's Office

CONTACT: Michael McCann, District Attorney

ADDRESS: 821 West State Street; Room 405
Milwaukee, Wisconsin 53233

PHONE: (414) 278-4646

INITIATIVE: Eliminating Disparate Responses to Crack and Powder Cocaine

GOAL: Reduce the racially disparate impact from the differences between statutory punishments for the use of powder versus crack cocaine.

BEST PRACTICE: Prosecutorial leadership effectively educating the State Legislature about racial impact from mandatory punishment statutes and successfully changing racially disparate laws.

DESCRIPTION: A review of 1990 - 1993 data on the impact of crack and powder cocaine presumptive prison statutes by the Milwaukee Prosecutor showed that 98% of the convictions for crack cocaine were against persons of color. Powder cocaine convictions were 21% lower (77%) against persons of color. The prosecutor garnered the support of the state prosecutors' association and successfully lobbied to have the laws changed to eliminate the distinctions in the statutory requirements. The resulting laws mirrored the American Bar Association's recommendations on the issue, although in 1999 punishments for both drugs were increased.

During the three year span reviewed by the Prosecutor, 501 of 510 crack cocaine convictions were against persons of color (98%), 497 of African Americans and 4 of Hispanics. Of 1,538 powder cocaine convictions over the same time period, 999 were of African Americans and 183 were of Hispanics, representing 77% of the total. The differences in the penalties was enormous. While 1 to 3 grams of crack cocaine required a 1 to 15 year sentence, 1 to 10 grams of powder cocaine did not require active prison time and had a maximum of 5 years. In order to be eligible for a presumptive 1 to 15 year sentence, the crime had to involve 25 to 100 grams of powder cocaine; for any amount of crack over 40 grams, 10 to 30 years.

Prosecutor Michael McCann worked with other prosecutors in the Wisconsin District Attorneys' Association to change the laws to conform to ABA standards. The law was changed effective late 1993.

IMPACT: As a result of this prosecutorial leadership, the laws were changed so that the penalties for crack and powder cocaine were identical and greatly reduced: 1 to 5 grams, 0 to 10 years (increased in 1999 to 15 years); 6 to 15 grams, 1 to 15 years (increased in 1999 to 22.5 years); 16 to 40 grams, 3 to 20 years (increased to 30 years); 41 to 100 grams, 5 to 30 years (increased to 45 years); over 100 grams, 10 to 30 years (also recently increased to 45 years). In 1998, the disparity in convictions against persons of color was still apparent, though somewhat reduced: 91% of crack convictions and 71% of powder cocaine convictions.

MATERIALS AVAILABLE: Data from the Milwaukee Prosecutor's office; Statutes, compare: 1991/1992 Wisconsin Statutes 161.14 and 161.16 and 1997/1998 Wisconsin Statutes 961.16(2)(6). "The Racial Divide of Crack vs. Powder Cocaine Penalties," *The Washington Post National Weekly Edition*, Oct. 21-27, 1996; part of series: *Justice by the Numbers*; includes results of a public opinion survey showing marked differences in public opinion between sentences and the federal guidelines: www.washingtonpost.com archives.

Reducing Racial Disparity in the Criminal Justice System

Defense

Research and Assessment

- The defense bar, using its own or some other component's research, must identify those points in the case disposition process at which racial disparity is evident, explore how the policies, practices, and allocation of resources for the defense may contribute to that disparity, and advocate for appropriate corrective measures.

Effective Representation

- The defense bar must advocate for, and the system must provide for, effective representation as soon as possible after arrest.
- The defense bar must advocate for, and the system must provide for, access to appropriate diagnostic and assessment services at an early stage of representation.
- The defense bar should advocate for full discovery as soon after the arrest as evidence is produced by the prosecution, in order to prepare an effective defense, including an individualized sentencing proposal in felony cases.
- When client and/or offense present cultural issues unfamiliar to the defense attorney, build a team of family, community and other professionals from that culture to increase understanding of the dynamics of the case.
- Develop directories of area service and community organizations for use by local attorneys.
- Educate local defense attorneys on the existence of programs and special courts so that they can form a judgment regarding the role of such courts in providing services and the potential for reducing disparity.
- Provide opportunities for defense counsel training to improve competency for defense of youthful offenders (such as the ABA National Juvenile Defender Center) and in the use of psychological research for effective defense.
- Examine the role of race in capital cases from both the perspective of the accused and from the perspective of the assigned counsel; are capital cases represented by the least prepared and experienced attorneys? Are the resources adequate for effective defense in such cases? Determine ways to reform the system accordingly.

Advocate for Appropriate Pretrial Release Services

- The defense bar should advocate for the provision of pretrial services for all defendants held in custody as soon as possible after the arrest.
- The defense bar should insist that bail/release requests made by the prosecutor, and bail/release decisions made by the court, be justified only in terms of the defendant's risk of flight, or risk to public safety upon release, or both, and the absence of any less intrusive alternative for reducing that risk.

Sentencing Advocacy

- Defense attorneys should utilize sentencing advocates who can develop sentencing proposals for the court in felony cases and jointly challenge unwarranted disparities at sentencing.
- Public defense offices should establish effective working relationships with the schools, faith-based organizations, and social service organizations operating in communities in which a significant portion of criminal defendants reside in order to enhance their ability to prepare such sentencing plans, to advocate for their use by the court, and to monitor their effective implementation.

Legal Education and Advocacy

- Utilize the local Bar Association and Criminal Defense Attorney Association to become active on the issue of racial disparity: educate, analyze and improve the way defense attorneys understand and deal with the problems of racial disparity.
- Organize the Bar Association and/or the local Criminal Defense Attorney Association to call for standards and guidelines for bail, pretrial release, prosecutorial diversion, charge and plea bargaining.
- Organize the Bar Association and/or the local Criminal Defense Attorney Association to call for the development and funding of specific efforts to reduce minority representation at all stages of the justice process.
- Take an active role in the recruitment and advancement of attorneys in the local Bar Association who will focus attention on issues of racial disparity in the criminal justice system.
- Work with local law schools to determine status of minority representation among student body and work to achieve effective affirmative action policies to encourage the recruitment of minority students.
- Work with local law schools to encourage inclusion in Juris Doctor program curricula which sensitizes aspiring attorneys to the issues of race and racial disparity.

- Provide to local law schools the opportunity for practicums involving hands-on court room and client based work to offer more experience to the school program.
- Urge the adoption in Continuing Education Programs of curricula around the issues of race relations and the causes and effects of racial disparity.

DISCUSSION

More resources provided for indigent defense will ensure better, more equal, representation. Changes in the distribution of resources are often legislatively driven and depend on local circumstances which vary from state to state. Two areas where inequitable resources for defense causes can lead to disparate treatment are: the timing of the assignment of counsel and the inability for the defense to advocate for and be thoroughly familiar with, alternative and creative dispositions at sentencing.

The limitations on funding for public defenders or court appointed attorneys often cause many jurisdictions to delay the appointment of counsel until after the initial arraignment appearance. This creates a problem for effective representation since many critical decisions are made at that stage of the adjudication process including the charge, the plea offer, the plea itself, and the bail/release decision, which may, in turn, profoundly influence the outcomes at each of the subsequent stages of the process. Assuring timely and effective representation immediately after arrest is certainly in the interests of poor, minority defendants whose over-representation in the system may be the most obvious example of disparate treatment. This is an issue which clearly illustrates the need for a close alliance between prosecutors and defense counsel as the timing and conditions of bail and the “rules of engagement” regarding plea negotiations are two of the most critical decision points in the system where disparity can be reduced.

In recent years, court systems across the country have witnessed the emergence of various types of “therapeutic” courts, such as drug courts, domestic violence courts and community courts. The common thread is that these courts seek to fashion dispositions and sanctions that offer assistance to the parties in addressing some of the problems that underlie the alleged offending. However, the publicly supported defender offices that staff these and other criminal courts are often severely lacking in resources to develop and advocate for dispositions and sentences that are likely to protect the public and address the needs of the defendant. This dearth of defense resources limits the extent to which these alternative approaches can be used for the vast majority of criminal defendants who are poor, and a substantial proportion of whom are members of various racial and ethnic minorities.

One of the primary ways that defense counsel can actively pursue the reduction of racial disparity is through the local Bar and Criminal Defense Attorney Associations. These associations can be organized to become active on the issue in several ways which would become the subject of ongoing training and education. The goal of this training is to educate, analyze and improve the way defense attorneys understand and deal with the problems of racial disparity.

Other issues which the Bar and Criminal Defense Attorney Associations could address are:

- The development and implementation of standards and guidelines for bail, pretrial release, prosecutorial diversion, charge and plea bargaining.
- The development and funding of specific efforts to reduce minority representation at all stages of the justice process.
- The availability of other resource needs such as community-based alternative sanctions and sentencing advocacy opportunities.

Best Practices: Defense

AGENCY: King County Office of Public Defense
CONTACT: Robert Boruchowitz, Washington Defender Association
ADDRESS: 810 Third Avenue, Suite 800, Seattle, WA 98104 **PHONE:** (206) 447-3900 x.603

INITIATIVE: Reducing Disparate Treatment in the King County, Washington Justice System

GOAL: Reduce racial disparity in three criminal justice areas as first steps in reducing disparity in the processing of felony cases: 1) vehicular impounds as a result of convictions for Driving While License Suspended, 2) racial profiling in traffic stops and, 3) the process of handling police misconduct complaints.

BEST PRACTICE: Defense counsel leadership to provide a serious study and training on the issue of racial disparity leading to the development of specific initiatives to reduce disparate treatment.

DESCRIPTION: A 1995 study, *Racial and Ethnic Disparities in the Prosecution of Felony Cases in King County, Washington*, found that race has become a significant factor in local bail decisions and that, "controlling for legal factors, African Americans tend to receive higher sentences than whites and are less likely to be provided an alternative sentence conversion." The report recommended that "a fruitful direction to pursue in obtaining a more just criminal justice system is to try to confront and modify law, legal practices and policies that may disadvantage some groups." Subsequently, the Defender Association in Seattle successfully applied for federal BJA funding to identify practices that can be changed administratively through education and training programs, motion practices and appellate efforts to address systemic problems. Three policies are targeted:

- 1) Impoundment of vehicles driven by persons with suspended licenses: 42% of the cars impounded under the Seattle law (local ordinance) were driven by non-whites while they represent only 25% of the city population. Public defenders are addressing the issue in many ways: appealing the impounds, questioning hearing notice procedures that do not follow the ordinance requirements, recommending alternative approaches to judges, working with community groups to encourage the amendment of the law, educating public officials and engaging the media in a debate on the merits - and racially disparate results - of the law.
- 2) Racial profiling: the Association is targeting the issue of racial profiling by initially suggesting data collection efforts take place to record all stops, the age, gender and race of the suspect, the reason for the stop and the subsequent action. Once this data is collected, the issue of racial disparity can be measured and addressed. The group worked with the media on the issue by educating the press about similar efforts across the country - most notably Gloucester County, N.J. - and compelling them to develop editorial opinion on the issue.
- 3) Police misconduct: the Association is working with a mayoral committee to improve the process for reviewing police misconduct complaints, including helping the public comment on the process.

The Defender Association has developed a website (www.defender.org) which provides information on these issues and initiatives and has developed new training on the issue at State Bar Association meetings.

IMPACT: Broadbased education and public attention. On the issue of vehicle impounds, the group successfully eliminated an effort by the County to pass an ordinance similar to the City law.

MATERIALS AVAILABLE: At www.defender.org website: *National Bias, Local Solutions: Big Steps Local Defenders Can Take to Curb Discrimination in the CJ System* by R. Boruchowitz and L. Daugaard.

Best Practices: Defense

AGENCY: Gloucester County Public Defenders Office

CONTACT: Jeffrey Wintner, Public Defender

ADDRESS: 65 Newton Avenue
Woodbury, NJ 08096

PHONE: (856) 853-4188

INITIATIVE: Eliminating Racial Profiling in Police Stops

GOAL: Eliminate the practice in Gloucester County, New Jersey of stopping persons of color in routine traffic stops which resulted in racial discrimination.

BEST PRACTICE: Defense counsel leadership to provide serious study of racial profiling and legal dedication to end its use as one way to reduce the disparate treatment of persons of color.

DESCRIPTION: In early 1994, the five attorneys in the Gloucester County, N.J. Public Defenders Office filed suppression motions in 19 separate cases in which evidence had been obtained after traffic stops of African American motorists. The defense argued that the real motivation behind the state police stops was to look for evidence of offenses more serious than minor traffic violations for which they lacked reasonable suspicion: the drivers were stopped because of their race - an equal protection violation meriting suppression.

All 19 cases were consolidated into one discovery and suppression hearing which lasted for six months (*State v. San Pedro Soto*). In support of their discovery motions, the defense relied on an earlier decision from Warren County, N.J. finding that a racial breakdown of public defender cases stemming from traffic stops in a particular area, when compared to the racial distribution of defender cases generally, constituted a prima facie showing of discrimination justifying disclosure of numerous law enforcement records (*State v. Kennedy*). The court ordered disclosure of police records showing who was being stopped, and for what, on a certain stretch of Interstate 95.

With statistical help from experts at Temple and Carnegie Mellon universities, the Public Defender was ultimately able to present a prima facie case of racial discrimination in I-95 corridor traffic stops. In an opinion letter to counsel, the judge found that while the defendants have the burden of proving the existence of purposeful discrimination, discriminatory intent may be inferred from statistical proof presenting a stark pattern, or an even less extreme pattern in certain limited contexts (citing *McClesky v. Kemp*). The judge held that the state cannot rebut a prima facie case of selective enforcement by merely calling attention to possible flaws or unmeasured variables in defendants' statistics, but must introduce specific evidence showing that either there actually are defects which bias the results, or the missing factors, when properly organized and accounted for, eliminate or explain the disparity (citing *Bazemore v. Friday*). Nor will mere denials or reliance on the good faith of the officers suffice (citing *Castaneda v. Partida*). The defendants' charges were dropped.

IMPACT: In response to this issue, President Clinton signed an executive order in June directing all law enforcement agencies to start collecting information on the race, sex and ethnicity of people they arrest or question to determine whether federal law enforcement is engaging in racial profiling. The directive follows a Justice Department initiative to gather a cross section of participants to examine the prevalence of racial profiling and to make recommendations on both tracking its incidence and training to prevent it.

MATERIALS AVAILABLE: At www.defender.org website: *National Bias, Local Solutions: Big Steps Local Defenders Can Take to Curb Discrimination in the CJ System* by R. Boruchowitz and L. Daugaard.

Reducing Racial Disparity in the Criminal Justice System

The Judiciary

Research and Assessment

- Judges can provide important leadership in encouraging a research process similar to that described earlier in this manual to determine if minority defendants are treated disparately at:
 - ❖ arrest
 - ❖ the bail/release decision
 - ❖ in the assignment of defense attorneys
 - ❖ in diversion decisions, in the plea negotiation process
 - ❖ in the management of the court docket
 - ❖ at sentencing.

It is appropriate and desirable for judges to take a lead in discussions with representatives of the other system components, and representatives of minority communities, to identify factors that may contribute to disparity, and to develop and implement measures to correct disparity.

Expand the Range of Available Bail and Sentencing Options

- Institute training for judges on bail and sentencing decisions that examine not only the legal framework for judicial discretion but also provide specific education on improved pre-sentence investigation approaches by the defense, probation or some other agency, available alternatives to incarceration and eligibility requirements, enrollment procedures, etc.
- Work with other criminal justice officials and representatives of minority communities in designing and implementing useful and effective alternative pretrial release and post-adjudication sanction programs, in order to have a fuller array of options available to the bench.
- Work with local criminal justice and elected officials to consider how to address disparities in pretrial release and sentencing whereby defendants with access to resources (e.g., ability to pay for electronic monitoring or to privately enroll in a drug treatment program) are more likely to secure less punitive outcomes than those with lesser means.
- Maintain familiarity with scholarly and research literature documenting the processes that contribute to disparities, and use these findings appropriately in rulings on pretrial motions.
- Require pre-sentence reports from probation officers that connect defendants with services and treatments necessary to avoid continued legal involvement; request detailed sentencing plans and proposals for alternatives to incarceration from defense counsel in serious cases.
- At sentencing, examine the role that racially-biased decisionmaking at prior stages of the criminal justice system may have played in relationship to arrest, charging, and plea decisions.

Take any such unwarranted disparities into account in reaching a sentencing decision.

- Articulate the court's expectations for ineffective assistance of counsel for all defendants and communicate these to practicing defense attorneys.

Leadership Development

- Judges can influence decisions to advance persons of color and leaders on racial disparity issues throughout court administrative structure.
- Encourage the local bench to participate in national judicial initiatives which are addressing racial disparities. For example, the National Judicial Conference is developing a Judges' Bench Book which will include information on the issue of racial disparity.

Public Education

- Judicial officials can encourage the media - especially the print media - to examine issues of racial disparity and the potential and planning for reforms.
- Provide public forums, such as "demonstration courts," to show the public how the court system works and to communicate "zero tolerance" stance against racial disparity.
- Examine role of continuing education for the judiciary and determine opportunities for racial, class and gender sensitivity training. For example, a session might focus on the economic realities of offenders who are facing bail requirements and how they impact persons of color.
- Courts should speak out to the public about the outcomes and impact of mandatory sentencing laws, and the advantages of restoring judicial discretion to make effective use of an expanded array of sentencing alternatives, sentencing statutes and sentencing guidelines.
- Welcome "court watchers" to examine, monitor and report judicial behavior in terms of fair treatment to persons of color and others.

DISCUSSION

Judges have the opportunity to assess the cumulative impact of decisionmaking by criminal justice practitioners on how defendants are charged and what types of sentences are recommended. For example, federal judges can use a downward departure in a federal sentencing guidelines case for an African American man convicted of gun possession after observing that the offender's prior convictions include a number of minor traffic offenses that reflect the fact that as a black man he is more likely to be stopped by the police, therefore increasing his criminal history score more so than would be the case for a similarly situated white offender.¹⁷

¹⁷ *U.S. v. Leviner*, 31F. Supp. 2d 23 (D. Mass., 1998).

The development and implementation of a full range of sentencing options for use as alternatives to incarceration by the judiciary is fundamental to reducing racial disparity. The ability for the judiciary to use these alternatives at sentencing is equally critical.

Trial court judges have considerable authority over actions and the expressed attitudes of the attorneys who appear before them. A trial court is not expected to tolerate dereliction of duty or disrespect, or disruption of court processes by any attorney. The trial court has the responsibility to maintain the dignity and propriety of all proceedings. A trial judge should correct misbehavior or any disruption by an attorney, disciplining the attorney if necessary.¹⁸

The court's authority certainly extends to defense attorneys who use racist or other derogatory language or display such tendencies during their examination of a witness or argument. When attorneys fail to conform their behavior to the reasonable expectations of the court, they may be held in contempt and otherwise sanctioned. This authority extends to attorneys who take advantage or exploit a defendant's race to advantage before a jury.¹⁹

Judges have a particular obligation to be attentive to counsel's conduct during jury selection. The court should permit voir dire to be thorough enough to disclose grounds for challenges for cause and to facilitate the intelligent exercise of each side's peremptory challenges.²⁰ But the "intelligent exercise of peremptory challenges" does not extend to the use of peremptory challenges to eliminate racial diversity in a jury panel. With or without objection by either party, a court should not permit use of peremptory challenges to remove a prospective juror for reasons which are constitutionally suspect.²¹

The judiciary has other means of strengthening its own constitutional commitment to reducing racial disparity. In most states, the highest court describes rules to help guide and control judicial conduct in the lower courts.²² Utilizing studies or research data demonstrating racial disparity at one or more stages of the criminal court process, judicial agencies (often the state supreme court) should adopt rules which will achieve judicial and law enforcement objectives in criminal procedures while reducing disparity in application and outcomes.

Judicial education is one of the most critical elements in the fight against racial disparity. Vigorous training programs should be established by organizations responsible for judicial training. These

¹⁸ *ABA Standards for Criminal Justice* 6-3.5 (2d ed. 1980 & Supp. 1986)

¹⁹ *US v Robertson*, 29F. Supp. 2d 567, 570 (D. Minn., 1998)

²⁰ *ABA Standards for Criminal Justice* 15-2.4 (3d ed. 1996).

²¹ *ABA Standards for Criminal Justice* 15-2.8 (3d ed. 1996).

²² For example, the Pennsylvania Supreme Court has "the power to prescribe general rules of governing practice, procedure and the supervision of all officers of the judicial branch..." Pennsylvania Constitution Article 5, Section 10.

should focus on the varieties of sentencing theory, the range of sentencing options which various theories call for, the nature of the sentencing options actually available in that jurisdiction, and how they can be utilized by the judge in his or her courtroom.

It is important to understand that relationships between judges and defendants/offenders can make a difference. Offenders can be affected by the realization that judges are trying to help them and are concerned about their problems. The personal consideration that is frequently extended to the privileged defendant is a model for individualized treatment that should be offered to all defendants.

Judges can help by managing dockets and arranging schedules to address public defender workloads by, for example, arranging for them to have a day free of court appearances for client contact. Judges can similarly provide time for the defense and presentation to conference cases in a less frantic manner than often occurs during normal court hours. These strategies could be included in new judge training on docket management.

Judges can stimulate public discussions among court officials and the public. For example, following on a report from Northeastern University that minority suspects charged with drug offenses were more likely to be prosecuted on distribution charges than white suspects in similar circumstances,²³ a judge convened a working group of police, prosecutors, and minority community leaders to determine whether the race of a defendant played a role in how drug cases are charged.

Judges can initiate studies of their jurisdiction's pretrial release and sentencing practices and respond with judicial education programs that include courses designed to eliminate bias in pretrial release and sentencing. These programs can examine how unconscious biases may affect judges' ability to deal equitably with persons unlike the judge - whether different by race, sex, class, sexual orientation, or political orientation.

²³ Robert Keough, "The Color of Justice," *CommonWealth*, Summer 2000; Judge Sydney Hanlon, Dorchester, Massachusetts District Court.

Best Practices: Judiciary

AGENCY: Maryland Court of Appeals
CONTACT: Chief Judge Robert Bell and Court Information Officer Sally Rankin
ADDRESS: Maryland Court of Appeals
361 Rowe Boulevard; 4th Floor
Annapolis, MD 21401

PHONE: (410) 333-6396 (410) 260-1488
Chief Judge Bell Ms. Rankin

INITIATIVE: Enhancing Positive Public Perception of the Judiciary

GOAL: Build public confidence and trust in the justice system especially in the areas of expedition and timeliness and perceptions of racial and ethnic bias.

BEST PRACTICE: Judicial leadership to determine the degree to which public confidence has eroded in the area of judicial ethnic and racial bias and address it within the system through training and outside the system through public education campaign.

DESCRIPTION: In 1998, as part of a national effort by the Conference of Chief Judges and through the leadership of Maryland Court of Appeals Chief Judge Robert M. Bell, the Maryland judiciary spearheaded an effort to determine the level of confidence and trust which the public has of the justice system. The Chief Judge appointed a statewide, multi-disciplinary committee to develop a plan on how to address the issue of public confidence. The Maryland Committee on Building Trust and Confidence in the Justice System includes leaders from all aspects of the justice system statewide including judges, lawyers, legislators, and advocates for the rights of victims, children and youth at risk. The Committee developed a survey which measured public confidence and identified specific areas for improvement. The survey showed a lack of confidence in two primary areas: timeliness/efficiency of the court system and racial/ethnic bias.

The Committee recommended to the Chief Judge that a three-pronged approach be instituted to address these issues: *Education* within the judicial branch so court employees can better inform the public and those outside the system, targeting groups such as jurors, so that a clearer understanding of the system process results; *Mass Media* attention so that newspapers and broadcast media educate the public about justice system resources and ways to offer feedback to the courts; and presenting a *Unified Front* so that the educational process will be part of a cohesive strategic plan which will unite the Maryland judiciary's key players. The Committee is developing a five year plan of action to initiate these approaches.

Two responses are being implemented to address the perception of ethnic and racial bias. First, a follow-up to a survey issued several years ago on gender bias is being updated to include racial and ethnic bias issues and will be used in the year 2000 to gain a better understanding on the specific reasons that the public trust has eroded. Second, the education arm for the judiciary, the Maryland Judicial Institute, has developed and implemented a judicial training curriculum on cultural diversity which includes racial/ethnic bias examples as part of the training. This cultural diversity training is also be offered to non-judicial staff.

IMPACT: The attention to the issue and the development of a specific plan of action has led to an increased understanding of racial and ethnic bias. The impact of implementation strategies will be measured over time.

MATERIALS AVAILABLE: *Report to the National Conference on Trust and Confidence*, Maryland Committee on Building Trust and Confidence in the Justice System (1999); *Cultural Diversity Training Outline*, Judicial Institute of Maryland (1998).

Reducing Racial Disparity in the Criminal Justice System

Probation

Research and Assessment

- Probation officials, with the assistance of other criminal justice personnel and representatives of minority communities, should carefully review their policies, practices, guidelines, and supervisory systems to identify those factors that dictate the kinds of information they collect on defendants, and the ways in which that information is interpreted in:
 - ❖ preparing presentence reports
 - ❖ making sentencing recommendations
 - ❖ seeking community-based services for potential and current probationers
 - ❖ monitoring and interpreting the behavior of persons under supervision
 - ❖ applying graduated sanctions to non-compliant probationers
 - ❖ initiating probation violation proceedings.

Those influencing factors that may impact negatively on minority group members should be identified and modified to reduce their disparate effects.

- Analyze the presentation of pre-sentence reports on an ongoing basis to determine whether the style and language used in them differs by race or ethnicity of the offender. If so, initiate appropriate training measures to eliminate any unintended bias in such presentations.

Reorient Probation Services to a Community-Based Model

- There is a need to be aware of any social and cultural distance between probation personnel and the people whom they investigate and supervise. Toward that end, probation departments should decentralize their operations into the communities where their caseloads are concentrated.
- Decentralized personnel should focus on developing effective working relationships with local faith-based organizations, civic organizations, and social service agencies to assist in developing more individualized presentence reports, in providing services to probationers, in connecting these local agencies to effective working relationships with the courts, and in developing a range of graduated sanctions for non-compliant probationers, to reduce revocations where appropriate.
- Decentralized personnel should work with police, other criminal justice agencies, and neighborhood organizations, to solve some of the community problems that produce high rates of crime and arrests. The Boston juvenile gang model, in which probation officers work with police officers to meet with high-risk youth probationers and their families at home, seems particularly promising.
- Probation officers need to work outside the office and outside office hours to be more accessible to their clients and able to intervene early to problem solve.

Develop a Range of Sanctions for Non-Compliance Relapse

- A range of effective graduated sanctions for non-compliance, and relapse responses to drug abusing probationers, is especially important to reduce the number of probation violators who are being incarcerated, and to provide realistic assistance along a path to a more law-abiding life.
- Assess whether minorities may require additional services to maintain compliance, including employment, substance abuse, and others, and focus the resources of probation to respond accordingly.
- Examine and improve as needed policies and processes for handling probation violations so that they are based on neutral and objective assessments of risk and driven by structured guidelines which standardize as much as possible the criteria for and response to violations and which are continually monitored.
- Examine “relapse prevention model” for offender supervision and institute approaches (policies, procedures, programs, demonstration models) to weave this model into the current structure of probation supervision and enforcement.

Develop and Utilize Race Neutral Risk Management Assessments

- Institute well-researched, structured, neutral and objective assessments for risk management to determine levels of supervision which are continually monitored, and provide appropriate training for their use.
- Evaluate the impact of these tools on a regular basis to determine whether there are any unintended racial disparities.

Leadership Development

- Develop aggressive affirmative action policies for the recruitment, retaining and advancement of persons of color and those who portray leadership qualities around the issues of race, class and gender discrimination. Where civil service system requirements are paramount, it is especially important to recruit aggressively among communities of color for people to take civil service tests (e.g., through colleges and faith-based organizations), and to make sure that those tests are race neutral.

Advocate for Greater Public Support of Probation Services

- Examine relationship between lack of funding which drives high caseloads and the subsequent inability to provide quality services in a timely manner which ,in turn, may lead to disparate treatment based on race, class or gender. How can the quality of performance be maintained under difficult conditions? What is the impact of high caseloads on racial disparity?
- Probation agencies are notoriously under-funded and, within the criminal justice network, they are the most vulnerable to budget cuts. Yet their caseloads, in which minority offenders are over-represented, rise every year. To undertake the efforts recommended here, and to prevent the increasing confinement of minority offenders, it is crucial that probation agencies be provided with more adequate levels of funding.

DISCUSSION

The goals and objectives of probation agencies are in a period of transition today regarding the appropriate balance between enforcement/supervision and treatment. Neither role can be done well without access to the full range of human services available in the community.

In recent years, more policymakers have argued that probation officers should be brokers of services as they are not equipped to provide treatment themselves. One unintended consequence of this is that probation agents are becoming more like law enforcement, rather than case managers - despite the fact that they have higher caseloads in need of services. At the same time, human service agencies are relying more on the criminal justice system to handle difficult cases rather than cooperating to provide services while probation provides supervision.

This lack of resources and the need for more sophisticated policies to guide their use, can lead to disparate treatment of minorities who are under probation supervision. In order to address the issue, policymakers must provide guidance on the criteria which will be used to recommend services - such as more structured drug treatment as a response to relapse rather than revocation - and a much broader commitment to accessing existing and new services in the areas of treatment, vocational training, education and employment.

Discretion must be exercised by supervising agents who, in turn, need effective standards for assessment and classification decisions, structuring the size and characteristics of caseloads, conducting supervision and monitoring, and making decisions regarding which offender clients receive specific services. In the absence of effective standards and supervisory accountability systems, these decisions are vulnerable to excessive subjectivity and inadvertent bias. For example, the frequency of drug testing and the range of responses allowed are often subjective and they need to be controlled by standards for application and response which are race neutral.

Goals and objectives regarding drug use that are based on a relapse prevention model, rather than detection, can aid in moving toward more successful community-based outcomes for offenders. This requires broad-based education of not only probation agents but judges and prosecutors as well.

The purpose of the presentence investigation needs to be refocused. An individualized model assessing both the circumstances contributing to the offense and exploring community-based sentencing options will produce different outcomes than more limited reports that primarily focus only on the offense itself. Judges and probation offices can work cooperatively so that judges articulate what they need from presentence investigations to help them with disposition, focusing on specific information such as drug use, mental health, and risk assessment, and the availability of community-based treatment and service programs. If the sentencing judge dismisses the probation officer's recommendation, s/he should do so with consideration for the probation officer's position, validating the officer so s/he does not feel undermined or have the relationship with the client damaged.

Probation agencies must determine if their offices will operate on an enforcement model or a broker of services/case management model and hire accordingly. The recruitment process for probation officers is as important as their training and education at each stage. A fundamental step in avoiding disparity is recruiting probation officers who believe in due process.

Crucial to the role of probation agencies in developing approaches to reduce racial disparity is to gain the support and involvement of other agencies, organizations and interest groups. In essence, to engage the community in its work to provide fair and racially sensitive services to offenders under their supervision. The American Probation and Parole Association has recently adopted a national policy for its members that will require critical changes to the way that probation agencies do business. This policy, called "Broken Windows Probation," calls for the practice of inclusivity - both formally and informally - when probation administrators develop policies, initiate programs, develop supervision strategies and deliver services. This policy should do much to help reduce racial disparity because the organizations which represent public opinion on the need to reduce disparity will be involved in the process. The recommendations of the APPA include the following suggestions for local probation offices, which are further encouraged to reduce racial disparity:²⁴

- Create a system that has meaningful participation for victims and the community;
- Develop partnerships with neighborhood groups, schools, businesses, and faith communities to bring offenders into an environment that has pro-social supports and structure;
- Establish cooperative partnerships among probation, law enforcement, and other criminal justice agencies that focus on public safety and the related issue of racial disparity;
- Partner with human service, treatment, and non-profit agencies to provide enhanced services to assess, diagnose, treat, and supervise offenders; and,

²⁴ Adapted from: "Broken Windows" Probation: The Next Step in Fighting Crime; a Civic Report by the Center for Civic Innovation at the Manhattan Institute; (New York: August, 1999). (Available at www.manhattan-institute.org).

- Create a comprehensive education campaign to make citizens aware of the crime problem, and the related issue of racial disparity, the steps being taken to address it, and the communication that their involvement is needed and desired.

Best Practices: Probation

AGENCY: Fairfield County (Ohio) Adult Probation

CONTACT: John E. Baus, Director

ADDRESS: Hall of Justice; 224 Main Street
Lancaster, Ohio 43130

PHONE: (740) 687-7048

INITIATIVE: Race Neutral Risk/Needs Assessment for Probationer Supervision Assignment

GOAL: To objectively assign felony offenders to probation supervision levels based on race-neutral factors.

BEST PRACTICE: Use of an objective, nationally and locally validated, race-neutral risk and need instrument to reduce disparity in decisions regarding offender supervision level assignment.

DESCRIPTION: The Ohio Legislature passed Legislative Sentencing Guidelines in 1996 with the express purpose of reducing incarceration and racial disparity in sentencing. The Fairfield County Adult Probation Department subsequently implemented a risk/needs assessment instrument to determine the level of supervision of sentenced felony offenders and to design offender specific supervision plans. The instrument, the Northpointe COMPAS - Correctional Offender Management Profiling for Alternative Sanctions - software is a broad band assessment tool covering a multi-dimensional set of criminogenic factors.

COMPAS assists in determining appropriateness for community placement at any decision point in the system, corresponding levels of supervision, accountability and structure, and in guiding the case management and treatment plan. Reassessments may be done over time to measure changes in dynamic risk/need scales. The instrument is designed to be applicable to offenders at all seriousness levels from non-violent misdemeanants to repeat violent felons. COMPAS produces four major risk potential scales - *Violence, Recidivism, Flight (FTA), and Community Non-Compliance* – which have been shown to be statistically reliable predictors of successful community placement. COMPAS can also be normed to local offender populations and may be unique in its tracking of community placement outcomes which are used, in part, to "learn from its mistakes" through an artificial intelligence engine embedded in the software. COMPAS is a risk assessment instrument and a database which generates reports of case load profiles, program participation, supervision levels, outcomes, etc. COMPAS, using psychometric scaling methods, also assesses the broad domains of: Criminal Involvement, Social Environment, Pro-Criminal Sentiments, Criminogenic Needs; and Psychopathy and Psychological Factors.

Several variables which were found to be race biased are no longer used in the risk computation: race, crime, poverty and family criminality. Northpointe indicates that other characteristics, such as gang membership, and even the offenders address can be "proxies" for race but are unavoidable.

IMPACT: The use of the COMPAS has standardized supervision-level decision making and is thought to have eliminated any racial bias that may have been evident prior to the instrument being used; data showing racial breakdowns before the instrument was used is unavailable. Data is now collected and monitored regarding race so that any disparity that may show will be reviewed and acted upon.

MATERIALS AVAILABLE: Information on the use of COMPAS for the supervision level assignment is available from Fairfield County Probation (see address and phone above). A complete description of the COMPAS is available on the Internet at: www.northpointeinc.com

Best Practices: Probation with Community Programs

AGENCY: Homeboyz, Inc.
CONTACT: Danny Goldberg
ADDRESS: 731 West Washington Street
Milwaukee, Wisconsin 53204 **PHONE:** (414) 672-3487

INITIATIVE: A website design, training and job placement ministry.

GOAL: To create a community of reconciliation where young people deal truthfully and hopefully with their past failures and renew their lives with new high-tech skills and jobs.

BEST PRACTICE: By working with minority youth in a supportive community that focuses on work ethic, strong values, and gainful employment, Homeboyz creates options to crime and reduces racial disparity.

DESCRIPTION: Homeboyz is a ministry program serving largely minority youth in developing job skills, conflict resolution, public speaking and leadership. Its slogan, "Nothing stops a bullet like a job," points to the program's emphasis on outreach to gang members in a violent neighborhood. Staff and advanced trainees mentor new enrollees in a website design business that places graduates into paying jobs. Rather than focus only on job training and life skills, Homeboyz puts the ideals of personal and social transformation ahead of economic goals and equips its graduates to prosper inside and outside the work environment.

Homeboyz is a member of the Digital Workforce Training Alliance organized by CitySkills.org, a national support organization for nonprofits that provides web-related job training and maintains commitments to job training and economic development in urban areas with high underemployment. Young people in training learn to balance the demands of ongoing learning with the demands of web site production schedules and deadlines. Staff members who oversee the training also design, build and maintain business clients' sites. Trainees who reach the production phases of the curriculum work on tasks for bill-paying projects which fund the training program. The functioning business allows trainees to experience the risks and rewards of dealing in real time with real clients, working with project staff who are answerable to a "bottom line" and the standards of customer satisfaction.

Homeboyz maintains formal and informal contacts with the criminal justice system, working with attorneys and judges at sentencing, providing training for probationers and young ex-offenders released from the state's Youth Leadership Training Center who can enroll in Homeboyz during their parole. Homeboyz emphasizes voluntary participation of offenders in its programs, but through community outreach and contacts with the criminal justice system, young offenders are notified of the program either prior to sentencing or while on probation or parole.

IMPACT: Since the program started in 1996, 128 young people have graduated from the training program and moved into full time employment in the information technology industry. Of these, 122 did not have a high school diploma but gained their GEDs during their training or internships. The program has placed 36 former gang members in jobs in the U.S. at salaries up to \$40,000 per year; another 18 have graduated into IT jobs in Mexico. Seventy percent of the graduates of Homeboyz are minorities.

MATERIALS AVAILABLE: A description of the program and its service and philosophy can be found on the Internet at: www.homeboyz.com; further information is available by calling the number listed above or by inquiring via E-mail at: danny@homeboyz.com.

Reducing Racial Disparity in the Criminal Justice System

Jails and Prisons

Review Practices and Procedures to Ensure Race Neutrality

- While fair treatment is an important concern for everyone, its importance is intensified for those held in total institutions like jails and prisons. Given the predominantly minority composition of the inmate population, and the predominantly white composition of the custodial staff and managers, sensitivity to perceived racial bias is especially problematic in these institutions. Therefore, it is important that both the staff and the inmates in each institution are provided with assurance that the issue of racial disparity in treatment is an important concern of the administration.

Toward that end, the administration in each institution should form a working party consisting of a representative from each department in the institution and inmate representatives to review all policies and practices to assure that everything necessary is being done to guard against racially disparate treatment of inmates. To the extent that racially disparate outcomes are identified, the administration should develop policies or practices that can achieve the institution's objectives while reducing unwarranted disparities. The review should focus on at least the following key decisions affecting inmate life:

- ❖ Inmate risk assessments and classification;
- ❖ Assessments of inmates' alcohol and drug dependency;
- ❖ Assessments of inmates' mental health needs;
- ❖ Inmate access to libraries, gyms, and other facilities in the institution;
- ❖ Inmate access to treatment for alcohol and chemical dependency;
- ❖ Inmate access to physical and mental health services;
- ❖ Inmate access to religious and counseling services;
- ❖ Inmate access to educational and skill development services;
- ❖ Inmate access to work and educational release programs;
- ❖ Consideration of dietary and religious preferences in menu preparation;
- ❖ Development of rules for inmate behavior;
- ❖ Application of the disciplinary system to inmates;
- ❖ Inmate eligibility for parole;
- ❖ Inmate access to community services upon release.

Monitor Racial Tensions in Institutions

- Establish a plan for the routine monitoring of racial tensions between staff and inmates, and among various groups of inmates, and for regular presentation of programs designed to reduce those tensions.

- Establish a plan for the routine monitoring of gang formation and inter-group hostilities among the inmates, and for regular interventions to discourage gang formation and diffuse inter-group hostilities.

Affirmative Action in Recruiting and Leadership

- Ensure there are sufficient numbers of staff of same race as prisoners to promote understanding of the needs and points of view of different racial groups and to give system credibility and legitimacy.
- Develop aggressive affirmative action policies for the recruitment, retaining and advancement of persons of color and those who portray leadership qualities around the issues of race, class and gender discrimination.

Utilize Community Resources to Augment Services

- Establish mechanisms that enable the social service staff to work effectively with faith-based organizations and service organizations in communities from which significant segments of the inmate population come to facilitate communication, family visiting, and referral to community services upon release.
- Develop with parole authorities the nine essential components for successful offender reintegration (see page 70).

DISCUSSION

Similar to probation, discretion on the part of supervising personnel (guards, case managers) can lead to disparate treatment. Without the development and regular review of standards for assessment, case levels, supervision and monitoring, decisions regarding which offender clients receive specific services are subjective and open for disparity. Jail and prison administrators are encouraged to examine the use of discretion in areas of job and housing assignments, inmate disciplinary action, strip and cell searches, and drug testing, and to institute race sensitive neutral, objective, structured and validated guidelines for the exercise of discretion. Suggestions include:

- Establish policies, procedures and reporting requirements
- Identify criteria for use of discretion, e.g. drug testing of specific prisoner
- Provide for supervisor review of reports
- Provide independent appeal or grievance procedure
- Identify both legal requirements and progressive practices
- Use resources provided by professional associations such as standards, accreditation and best practices
- Develop a credible grievance process with links to central office so that complaints can be monitored and are not lost.

- Insure that Internal Affairs investigators are sensitive to racial dynamics within facility and are themselves a diverse group to give credibility to investigations.
- Install video cameras in less public locations where incidents are likely to occur.
- Insist on zero tolerance for acts of overt discrimination and intolerance. Racial tension (especially between staff and prisoners) creates a security risk. Threats to order and stability through staff behavior cannot be tolerated.
- Provide appropriate, high-quality, well-structured training to sensitize staff to racial issues.
- Encourage chief executive/key decision maker to include questions on racial disparity and strategies to address it when considering appointment of senior staff.

Effective Management Information Systems are essential to monitor changes in overall agency behavior. Tracking and reporting mechanisms for decision points are essential. Auditing for adherence to policies should include measurement of racial disparities.

Corrections policies should reduce uses of discretion which can lead to discriminatory behavior. For example, classification criteria and decisions which may not be race neutral need to be examined to determine their effect on disparity. This is particularly important because of the connection between institutional conduct and release decisions.

While not in itself discriminatory, the lack of in-prison programming which can reduce the likelihood of relapse upon release is a serious deficiency, particularly in light of the fact that some offenders may prefer to max out their time to avoid post-release supervision - especially of their drug use. Jail and prison administrators are thus encouraged to become familiar with the "What Works?" literature, which has identified "guiding principles for effective correctional intervention" (detailed below). These principles, if enacted as overarching policy goals and the subject of intensified training can do much to reduce the negative effects of incarceration and disparity which may be present in the criminal processing of offenders.

Best Practices: Prisons

AGENCY: Ohio Department of Corrections
CONTACT: Tom Stickrath, Assistant Director
ADDRESS: 1050 Freeway Drive, North; Columbus, Ohio 43229
PHONE: (614) 752-1162

INITIATIVE: Erasing Racism in the Ohio Prison System

GOAL: To eliminate racism in the operations of the Ohio Department of Rehabilitation and Correction.

BEST PRACTICE: Leadership, commitment and dedication to addressing racial disparity in a state prison system through aggressive policy development, training, monitoring and reporting.

DESCRIPTION: Following a riot in the Ohio prison system in 1993 that was in part driven by racial tensions, the Department of Rehabilitation and Correction (DRC) made a commitment to eliminate racism in all facets of its operations. The DRC initiated aggressive programs and policies aimed at reducing racial tension within the prisons while, at the same time, working toward an environment accepting of individuals with diverse backgrounds in race, culture, and religion. Efforts include highly organized minority recruitment with an emphasis on: recruiting applicants willing to relocate to an institution in an area with a low minority population; the development of a successful network with the Urban League, NAACP, Human Services, Black Ministerial Alliance, and numerous community action agencies and colleges; advertising statewide in Hispanic newspapers and radio stations; jobs fairs in urban centers; and importantly the implementation of a centralized recruitment, assessment and selection process for all DRC employees in order to eliminate bias and favoritism in hiring.

The DRC also greatly increased pre-service diversity training for new and current employees to 32 hours: 8 hours as pre-service, 16 hours as in-service and 8 hours follow-up. The training of instructors is provided by the national Anti-Defamation League's organization, "A World of Difference." The department's Bureau of Equal Employment Opportunity has been re-directed to investigate complaints of racial discrimination and to maintain statistics by race and sex for all areas of employment including hiring, promoting, transfers, separations, disciplines, and grievances. The DRC actively boosted career development, mentoring, and cross training between employees with diverse professional backgrounds and has increased the use of minority businesses. A variety of activities are in place to reduce racial tensions in the prisons including an in-prison closed circuit television station which airs a cultural awareness program highlighting a different culture each month; a self-esteem program; a concert series which includes performances by inmates and staff - often together; spiritual retreats every six months led by prison ministries; and an annual cultural recognition day which features a wide variety of inmate heritage, speakers, musicians and food.

IMPACT: In an institutional setting where 55% of inmates are minorities, minority staff increased from 11% in 1982 to 22% in 1996; minority representation in upper management has increased from 10% in 1988 to 36% in 1997; the amount of time devoted to diversity training increased by 400% from 1992 to 1996; the use of minority businesses has increased from 13% in 1991 to 22% in 1996.

MATERIALS AVAILABLE: "Intolerance in Prison: A Recipe for Disaster," R. Wilkinson & T. Unwin, *Corrections Today*, June, 1999; *Erasing Racism*, DRC, 1997; *a Workplace of Difference*; Handbook; Anti-Defamation League (1999); *Valuing Diversity*, DRC Diversity Training Overview; various articles and manuals.

Reducing Racial Disparity in the Criminal Justice System

Parole

Research and Assessment

- Parole administrators should establish a working group of parole commissioners, parole officers, supervisors and managers, and parolee representatives to review policies and practices that influence:
 - ❖ decisions regarding parole release
 - ❖ the development and imposition of the parole release plan and conditions
 - ❖ the monitoring of parolee compliance
 - ❖ the decision to violate the parolee for non-compliance.

The review should focus on identifying ways in which the factors influencing these decisions may produce racially disparate effects, and on the development of appropriate corrective measures when this is the case.

- Parole authorities should carefully review revocation practices and, with the aid of service organizations in the community, construct a system of graduated sanctions for responding to non-compliance. At present, parole officers are often faced with the choice between ignoring non-compliance and returning the parolee to prison.
- Parole authorities should establish protocols to monitor and analyze parole violations processing, cross-referenced by race to determine if patterns of discrimination are apparent.
- Paroling authorities should assess whether minorities may require additional services to maintain compliance, including employment, substance abuse, and others, and locate the resources to respond accordingly.

Establish Relationships with Community-Based Organizations

- Parole administrators should establish effective working relationships with faith-based organizations and public and private service organizations in communities in which significant numbers of parolees reside. These organizations may then become actively involved in developing a release plan for persons about to be paroled, and in providing needed services to the parolee to assist in his or her re-integration in the community.
- Parole offices should be decentralized to these communities to assist parole officers to learn about and become known in the community. This will facilitate their efforts to involve the community in assisting the parolee to make a positive adjustment.

Develop Relationships with other Criminal Justice Agencies

- Encourage paroling authorities to interact on a regular basis with prosecutors and judges on issues of race and racial disparity. Cross-system training opportunities should be identified and pursued.

Develop Race-Neutral Risk Management Assessments

- Institute well-researched, structured, neutral and objective assessments for risk management to determine levels of supervision which are continually monitored.

Assure Diversity of Leadership and Orientation

- Appoint Parole Boards that are racially and culturally diverse.
- Provide racial and cultural sensitivity training for Parole Board members, as well as parole officers and supervisors, and encourage broad-based interaction with the professional community and general public on racial and ethnic issues.

DISCUSSION

Paroling agencies are under increased pressures to balance the political and public safety concerns of inmate release with the realities of prison crowding. But within this context, attention must be paid to the allocation of resources to helping people when they come out of prison and back into the community. Arrangements for post prison transition must deal realistically with the poor coping skills that contribute to offenders' return to prison. Support systems need to be put in place involving business and the private sector.

Two areas are discussed below that should be examined especially as they can improve successful reintegration and serve to reduce the likelihood of disparate successes based on race, ethnicity or gender²⁵:

1. Cross-system Integration

The primary obstacle to successful post-release transition of alcohol and drug addicted prison inmates is a lack of system integration between the releasing institution and the community (housing, employment, health care, treatment). In order to improve cross-system integration:

- The offenders' problems and needs should be seen as the responsibility of both systems with offender success benefiting both systems.
- Systems-wide planning should take place at both the state and local level.

²⁵ Summarized from: "Continuity of Offender Treatment for Substance Use Disorders From Institution to Community;" *Treatment Improvement Protocol (TIP) Series; TIP #30*; U.S. Dept. of Health and Human Services-72, Substance Abuse and Mental Health Administration, Center for Substance Abuse Treatment; 1998 (available through NCADI at 1-800-729-6686).

- Joint case planning - driven by screening and assessments of offender treatment and ancillary needs- must be an integral component of the projects.
- There must be established protocols for sharing case information.
- A “boundary spanner” or “case manager” must be in place to negotiate specific offender case management variables regardless of the setting (i.e. prison or the community). The boundary spanner should be a community-based position with access to the in-prison components of the project.
- On-going case training is needed in both systems.
- Creative contracts and letters of agreement must delineate the responsibilities of both parties.

2. The Essential Components for Successful Offender Re-integration

The linkages between the institution and the community must be clear, strong and delineated in writing before the program is implemented. Agreements between institution and community-based service providers, regardless of who they work for, should address several issues:

- Recognition by service providers that system linkages and case management are essential.
- A shared statement of common goals and objectives.
- Multi disciplinary teams (such as welfare, supervision, child protective custody, drug/alcohol/mental health treatment) working from the same case management plan regardless of the setting (i.e. prison, community, court, parole, etc.).
- Clear documented protocols for institutions and community service providers that specify how continuity of services will take place
- Agreements for assessments, case management planning, and case management services.
- The provision of a full range of services which are matched to individual need and are driven by standardized assessments provided by qualified and trained staff.
- A unified approach to relapse prevention and response to predictable relapse.
- Case managers that span the boundaries of all systems (i.e. institutional and community).
- Ability to move from less to more intensive sanctions/services pursuant to offender behavior.

Adult offender systems that include safe “middle ground” housing can provide control without secure confinement prior to full release to the community. These supportive and controlled environments offer an opportunity to deal with the issues often associated with return to prison -- usually drug relapse and lack of quality employment -- and would have an impact on racial disparity issues if for no other reason than the overrepresentation of minorities in the nation's jails and prisons.

Similar to issues in probation and institutions, discretion on the part of parole agents can lead to disparate treatment: without standards for assessment, case levels, supervision and monitoring, the decisions regarding which offender clients receive specific services is subjective.

Many officials receive inadequate education about the use of random drug testing as an appropriate trigger for reincarceration. This may be particularly important in jurisdictions which are experiencing prison crowding. When the systems are crowded there may be an informal understanding not to be so quick to revoke parole – discretion at this stage may also reflect biases.

Increasing the use of revocation without standardized graduated sanctions can lead to both greater use of incarceration and disparities.

Best Practices: Parole

AGENCY: Multnomah County (Oregon) Adult Community Justice; Parole/Probation Division
CONTACT: Harrison Danley, Corrections Counselor, and Don Allen, Probation and Parole Officer
ADDRESS: 2205 NE Columbia Blvd.
Portland, Oregon 97211 **PHONE:** (503) 248-3393; Extension 27522

INITIATIVE: African American Program

GOAL: Successful transition from prison to the community of African American males; reduction of recidivism through post-prison support and counseling for inmates/parolees and their families.

BEST PRACTICE: The provision of culturally specific, outcome oriented training and education to African American males in prison in order to reduce racial disparity of this over-represented target population.

DESCRIPTION: African American male parolees account for about one quarter of the parole population in Multnomah County but more than half of the parole violators. As a group, their recidivism and parole revocation rates are disproportionately high because traditional methods of supervision have shown only marginal success.

The need for culturally specific approaches to dealing with issues of employment, education, vocational training and financial and familial stability led to the development of the African American Program in the probation/parole division of the Multnomah County Department of Adult Community Justice, now in its third full year of operation. Program goals for the target population of adult, African American male parolees include: decreasing criminal activity, parole violations, drug and alcohol abuse, and domestic violence; increasing full time employment, education levels, family involvement and diminishing truancy within participants' families, increasing the stability of community living beginning with affordable housing and in general, breaking the "system cycle of defeat."

The Program begins within the prison system itself where inmates are identified who are scheduled to be released to parole in Multnomah County within 120 days. To be considered, African American inmates must be willing to voluntarily participate in the program. Those with significant criminal histories and criminogenic needs receive assessments and may be moved to the Columbia River Correctional Institution where they will participate in individual and group counseling aimed at a positive transition to the African American Program upon release. Inmates must make a commitment to lifestyle and perception changes that will enable them to deal with the issues that contribute to the cycle of crime and imprisonment - behavior within the prison system must reflect this commitment or inmates may be expelled from the program. Upon release the Program staff immediately assume supervision under the authority of African American parole supervisors and counselors which includes the continuation of culturally specific group and individual counseling sessions, AA and NA meetings, and sessions aimed at improving employability and job skills, and employment search (through other community programs like Better People). Black history classes and family training are integral to the Program. Group sessions include families with a focus on improved school attendance by the children of the parolees. Once successfully established within the Program, participants help at-risk youth and the elderly through a variety of volunteer efforts designed to impart a sense of community and self-worth. The Program maintains strong partnerships with community organizations which can assist participants' in meeting their personal goals.

IMPACT: The Program is working with Reed College to design an extensive evaluation of the program's impact on crime, recidivism, parole violations, drug and alcohol use, domestic violence, employment, education and improved family functioning, measured by stable housing and increased school attendance by participants' children.

MATERIALS AVAILABLE: Information about the program including a brochure and a Program Status Report of May 1999 is available at the address listed above.

Best Practices: Community Program available to Parole

AGENCY: Better People
CONTACT: William AChip® Shields
ADDRESS: 4310 NE Martin Luther King, Jr. Boulevard
Portland, Oregon 97211
PHONE: (503) 281-2667

INITIATIVE: A counseling and job placement program for parolees with strong corporate, community business and local foundation connections that works collaboratively with prison, parole and probation authorities.

GOAL: Job placement and retention of parolees and ex-offenders with a focus on improving moral character.

BEST PRACTICE: Connecting with mainstream business and corporate community to focus on employment and counseling needs of parolees and other ex-offenders.

DESCRIPTION: Better People is a community-based program that combines counseling, job readiness, job placement and job retention for parolees and ex-offenders. The program is supported by both inmate groups and prison/parole authorities. Connections with probation and parole agents are maintained through the African-American Project that focuses on African-American probation agents working with African-American clients to reduce racial disparity. Better People's premise is that a balanced approach incorporating jobs and changing offenders' thinking is needed to achieve long term personal success. Counseling is centered on the 12 step program Moral Reconnection Therapy (MRT) that relies on self-introspection, improved cognitive skills, and setting and achieving long term goals. Employment issues are dealt with in a straightforward manner: get some money into offenders' pockets through good paying jobs and build a solid foundation of work-ethic and experience.

Services include twice-weekly MRT sessions, job placement, and follow-up through the Alumni Club® which lasts as long as the offender is motivated to stay involved.

The program receives strong support from several local and state foundations which provide grant monies to reduce the need for client fees. Better People is building positive relationships with the business community by successfully placing offenders into jobs with a high retention rate.

IMPACT: Of persons entering the program, 53% have completed the job readiness stage and 29% have been placed in jobs. The program has a 62% job retention rate after one year for offenders employed directly or indirectly through the program, an overall average wage of \$8.36 an hour and \$10 per hour for direct placements. An experimental research designed evaluation is currently underway to measure the program's impact on moral reasoning and recidivism, to measure program quality and to determine the variables associated with program success.

MATERIALS AVAILABLE: Program descriptions, news articles and the process for enrollment are available at: www.betterpeople.org; for more information, contact Chip Shields at the phone number listed above or via E-mail at: shields@betterpeople.org.

Reducing Racial Disparity in the Criminal Justice System

Systemwide and Legislative Options

While leaders at each level of the criminal justice system have a responsibility to address and reduce unwarranted racial disparity, a systemic and comprehensive approach by all parts of the system is critical if disparities are to be addressed effectively. There are two primary reasons for this:

Most decision points in the criminal justice system reflect input and actions from various actors in the system and so require a coordinated response. For example, sentencing decisions reflect input and/or advocacy from a probation presentence report, prosecutor, defense, and ultimately the judiciary.

Because outcomes are dependent on various actors, progress in one component of the system can be offset by decisions made in another area. Law enforcement efforts designed to reduce the use of “racial profiling,” for example, may be offset by a mayoral proclamation to “get tough on drugs” which results in increasing arrests in minority communities.

Legislative actions will also have a major effect on systemwide options. This may be a negative if new laws have a discriminatory impact but legislative support of systemwide reforms, as in the examples below from Connecticut and North Carolina, will greatly enhance their likelihood of success.

Systemwide efforts to address racial disparities can include the following set of activities:

Data Collection and Analysis

- Use existing planning forums, such as community corrections boards or criminal justice coordinating councils, to examine the issue and provide planning opportunities to address it.
- Assess the degree to which disparity is evident at each stage of the administration of justice and as an end result.
- Examine the utility of local Management Information Systems to determine the scope of the issue and ability to monitor changes to the system after reforms are initiated.
- Explore how technology affects disparity; for example, does the use of video arraignment help or hinder persons of color or low economic status?

Collaborative Actions

- Develop a framework for assessing which actors have input into each decision-making point of the system.
- Provide oversight and monitoring at each decision point of the system to examine, reduce, and track disparity.
- Establish a timetable, objectives, and strategy for reducing disparities at each stage of the system.

- Collaborate with national and state organizations and associations to develop model codes, guidelines, and policies to reduce disparities.
- Call for strong leadership to: a) Improve the quality of justice; b) Improve race relations and the social compact; and c) Reduce crime and improve the community's quality of life.
- Implement a "zero tolerance" agreement among key system actors that decision-making will be conducted in a race neutral fashion and disparity will be reduced wherever possible.
- Establish a systemwide agreement that, while discretion is critical to the administration of justice, its objective and effective use is essential for fairness. Standards, guidelines, and policies for the use of discretion can be applied at each point along the continuum, along with systems for monitoring.

Best Practices: State Agency (working with local prosecutor and community groups)

AGENCY: Florida Department of Juvenile Justice
CONTACT: Stephen Ray, Program Administrator, Bureau of Intervention Services
ADDRESS: 2737 Centerview Drive
Tallahassee, Florida 32399-3100 **PHONE:** (850) 488-9818

INITIATIVE: Pilot Projects to Reduce Racial Disparity in the Florida Juvenile Justice System

GOAL: Decrease disparate confinement of juveniles through increased diversion opportunities, enhanced training and improved monitoring capabilities.

BEST PRACTICE: Collaboration by state executive agency with community groups to determine the degree of racial disparity for youth in the justice system and the implementation of approaches for its reduction.

DESCRIPTION: A multifaceted approach to reduce the representation of minority youth in confinement facilities for seven sites in Florida. The federal funding in 1998 provided for new diversionary approaches, training and monitoring of impact based on a model developed in Hillsborough County, Florida. The model includes five primary activities: 1) Develop a collaborative core group of diverse agencies to address the issue; 2) Implement a systematic program of civil citations to divert youth from confinement and to assure that all juveniles receive equal treatment at the key decision points leading to confinement; 3) Implement community based programs specifically designed for minority youth charged with non-violent, third degree felony offenses; 4) Provide cultural sensitivity training to all agencies which service minority youth, and; 5) Increase the community awareness of the juvenile justice system and especially of the issue of minority overrepresentation.

Funding was provided by the federal Office of Juvenile Justice and Delinquency Prevention's Disproportionate Minority Confinement Initiative (DMC) which helps states comply with requirements of federal juvenile justice funding by testing various approaches for addressing disproportionate confinement. Based on a 1990 report by the Florida Supreme Court's Racial and Ethnic Bias Study Commission which documented progressive racial disparity in the juvenile justice system, the Florida Department of Health and Rehabilitative Services applied to be one of five states selected to pilot the DMC initiative carried out in two 18 month phases. During the first phase, states assessed the extent to which minority juveniles were disproportionately confined; during the second phase, states designed and implemented corrective action.

During the first phase, the state agency developed a study and found that minority juveniles were overrepresented at each phase of the juvenile justice process. Recommendations included hiring more minority personnel, enhanced cultural sensitivity training, the evaluation of existing programs and the replication of programs that were found to be successful at reducing minority representation. The second phase focused on developing a pilot project in Hillsborough County, Florida that began with the development of a core group led by the Tampa-Hillsborough Urban League and included representatives from law enforcement, the judiciary and treatment agencies which forged a plan to reduce disparate treatment.

IMPACT: Hillsborough County 1995 data showed a decrease from 1994 rates of juvenile cases handled judicially for both minority and non-minority youth; a 22% decrease in the number of black youth receiving community control, a 16% decline in cases transferred to adult court, and a 1% decline in cases resulting in commitment. The pilot was replicated in seven districts until executive budget cuts eliminated state funding.

MATERIALS AVAILABLE: Management Report, #99A; www.djj.state.fl.us/RnD/mr/minority.htm Evaluation of Disproportionate Minority Confinement (DMC) Initiative; Florida Final Report; www.ncjrs.org/pdffiles/dmc-fl.pdf.

Best Practices: Legislature (Connecticut General Assembly)

AGENCY: Commission on Racial and Ethnic Disparity in the Criminal Justice System
CONTACT: Hon. Aaron Ment Rep. Michael Lawlor, Chair, Judiciary Committee
ADDRESS: 231 Capitol Ave. Legislative Office Building, Room 209
 Hartford, CT 06106 Hartford, CT 06106
PHONE: (860) 566-05630 (860) 240-0530

INITIATIVE: Connecticut Commission on Racial and Ethnic Disparity in the Criminal Justice System

GOAL: To establish a permanent commission that will examine racial disparity in the criminal justice system and develop and recommend, prior to each legislative session, policies, substantive legislation, and training programs to reduce racial disparity.

BEST PRACTICE: Specific legislation requiring an annual examination and response to racial disparity.

DESCRIPTION: In May 2000, the Connecticut Legislature passed Public Act 00-154, *An Act Concerning Racial Disparity in the Criminal Justice System*, to establish a Commission on Racial and Ethnic Disparity in the Criminal Justice System. The commission consists of the Chief Court Administrator, Commissioner of Correction, Chief State's Attorney, Chief Public Defender, Commissioner of Public Safety, chairperson of the Board of Parole, chairperson of the African-American Affairs Commission, chairperson of the Latino and Puerto Rican Affairs Commission, a representative of municipal police chiefs, and a representative of a coalition representing police and correctional officers, and six members appointed by legislators. The Chief Court Administrator or designee serves as chairperson. The origins of this bill can be traced to a bipartisan forum in 1998 among 100 state officials from across the Northeast to discuss racial disparities in the criminal justice system. Rep. John Martinez (Deputy Majority Leader, CT) and Rep. Michael Lawlor (Chair, Judiciary Committee, CT) co-chaired the conference, and the Council of State Governments coordinated it. Bipartisan teams of policy makers and community leaders were formed in each of the northeastern states.

The Commission has 13 objectives:

- (1) Develop and recommend policies for reducing the number of African-Americans and Latinos comprising the pretrial and sentenced population of correctional facilities and reducing the number of African-Americans and Latinos who are victimized by crime;
- (2) Examine the impact of statutory provisions and current administrative policies on racial and ethnic disparity in the criminal justice system and recommend legislation to the Governor and the General Assembly to reduce such disparity;
- (3) Research and gather relevant statistical data and other information concerning the impact of disparate treatment of African-Americans and Latinos in the criminal justice system;
- (4) Develop and recommend a training program for personnel in agencies involved in the criminal justice system concerning the impact of disparate treatment of African-Americans and Latinos;
- (5) Research and examine the issue of the use of guidelines by courts when sentencing criminal defendants and recommend whether the General Assembly should create a sentencing guidelines commission to establish sentencing guidelines for state courts;

(6) Examine whether the General Assembly should require that a disparate impact statement be attached to any bill affecting criminal law or procedure to evaluate whether the bill would have a disparate impact on racial or ethnic minorities;

(7) Examine the implementation of policies and procedures that are consistent with policies of the American Bar Association intended to ensure that death penalty cases are administered fairly and impartially in accordance with due process, to minimize the risk that innocent persons may be executed and to eliminate discrimination in capital sentencing on the basis of the race of either the victim or the defendant;

(8) Annually prepare and distribute a comprehensive plan to reduce racial and ethnic disparity in the criminal justice system without affecting public safety;

(9) Develop and recommend policies and interventions to reduce the number of African-Americans and Latinos in the juvenile justice system;

(10) Analyze the key stages in the juvenile justice system to determine if any stage disproportionately affects racial or ethnic minorities including the decision to arrest a juvenile, the decision to turn a juvenile over to a detention center, the decision to nonjudicially dispose of the case or to file a petition of delinquency, and the decision to resolve the case by placement on probation, placement in a residential facility;

(11) Annually prepare and distribute a juvenile justice plan having as its goal the reduction of the number of African-Americans and Latinos in the juvenile justice system and which will include the development of standard risk assessment policies and system of impartial review, culturally appropriate diversion programs for minority juveniles accused of nonviolent felonies, intensive in-home services to families of pretrial delinquents and youth on probation, school programs for juveniles being transferred from detention centers, the recruitment of minority employees to serve at all levels of the juvenile justice system, the utilization of minority juvenile specialists to guide minority juvenile offenders and their families through the juvenile justice system, and community service options in lieu of detention for juveniles arrested for nonserious offenses;

(12) Develop a curriculum for training for all employees at all levels of the juvenile justice system on issues of cultural competency and strategies to address disproportionate minority confinement; and finally,

(13) Submit an annual report to the Governor and the General Assembly (See below).

IMPACT: The annual report will include: (1) The number of African-Americans and Latinos comprising the pretrial and sentenced population of correctional facilities; (2) The progress being made toward reducing the number of African-Americans and Latinos comprising the pretrial and sentenced population of correctional facilities; (3) The adequacy of legal representation for indigent defendants; (4) The adequacy of the number of residential and nonresidential treatment slots available for African-Americans and Latinos; (5) The adequacy of the number of court interpreters; and (6) Such other information as the commission deems appropriate. Finally, the commission is to report the need for additional resources to be made available to reduce racial and ethnic disparity in the criminal justice system without affecting public safety.

MATERIALS AVAILABLE: The bill is available in its entirety on the Internet: www.cga.state.ct.us. Use PA number 00-154 to locate the bill on the website. Information on the process of how the bill was developed and passed and Connecticut leaders responsible for its passage is available through the Council of State Governments (212) 912-0128.

Best Practices: Legislature

AGENCY: North Carolina Legislature and N.C. Office of Juvenile Justice
CONTACT: Cindy Thacker, Staff Development Nancy Lowe, Research and Planning
ADDRESS: 1801 Mail Service Center
Raleigh, North Carolina 27699-1801 **PHONE:** (919) 733-3388 Ext. 225

INITIATIVE: Comprehensive Requirements for Monitoring Juvenile Racial Disparity Data

GOAL: Decrease disparate treatment of juveniles through enhanced training and monitoring capabilities.

BEST PRACTICE: Legal mandate for state executive agency to develop and implement training guidelines to reduce disparate treatment of minority youth and to develop monitoring and reporting capability to track improvements on a client and systemwide basis.

DESCRIPTION: The North Carolina Legislature passed in 1998 a law to take effect in 1999 that would address the issue of racial disparity in the North Carolina Juvenile Justice System in three important ways. The Juvenile Justice Reform Act (Chapter 7B, N.C. General Statutes) requires the state executive agency (now the Office of Juvenile Justice, or OJJ) to: 1) Ensure that all persons who work with minority juveniles are taught how to communicate effectively with them and how to recognize and address their needs; 2) Advise law enforcement and juvenile justice professionals who work in the system on how to improve the treatment of minority juveniles so that all juveniles receive equal treatment; and 3) Develop an information system which will be able to monitor effectiveness of the system, particularly the degree to which minority youth are receiving fair and equal treatment.

This reform law was a result of a Governor's Study Commission on Juvenile Crime and Justice and partly an outgrowth of the federal Office of Juvenile Justice and Delinquency Prevention's (OJJDP) *Disproportionate Minority Confinement Initiative* (DMC) which helped states comply with requirements of federal juvenile justice funding by testing various approaches for addressing disproportionate confinement. Through a competitive process, OJJDP selected North Carolina as one of five states to pilot the DMC initiative, which was carried out in two 18 month phases.

During the first phase, each state assessed the extent to which minority juveniles were disproportionately confined; during the second phase, each state designed and implemented corrective action.

During the first phase, North Carolina officials developed a study and found that within 10 pilot counties, minority juveniles were more likely to be arrested, presented to intake, and referred to confinement facilities. The second phase included a plan to forge legislative authorization for sweeping changes in the juvenile justice system, which would include extensive new training initiatives and the requirement for on-going impact assessment of the system on youth in general and minority youth in particular. The newly created OJJ, is responsible for instituting the new law. OJJ has instituted the training curriculum and is designing the data system to monitor the impact of the new law.

IMPACT: The Juvenile Justice Reform Act of 1999 requires the OJJ to Assess whether minorities are receiving fair and equal treatment in the juvenile justice system with regard to the administration of predisposition procedures, of diversion methods, of dispositional alternatives, and of treatment and post-release supervision plans.® Impact analysis is expected sometime in the next year.

MATERIALS AVAILABLE: "1998 Legislation: Juvenile Law Reform," *Administration of Justice Bulletin* No.98/03 (on the web at ncinfo.iog.unc.edu); *Juvenile Justice Minority Sensitivity Training*; OJJ; and *Evaluation of the DMC Initiative*; *North Carolina Final Report* (www.ncjrs.org/pdffiles/dmc-nc.pdf).

CONCLUSION

The problem of racial disparity in the criminal justice system is one of the most challenging facing American society today. Many of the racial tensions and problems in society manifest themselves most prominently in high-profile criminal cases and in the composition of the prison and jail population nationally.

Addressing these problems is critical for many reasons. If the criminal justice system is to be viewed as effective and fair, then it needs the support and cooperation of all citizens and all communities. The perception or existence of bias or unwarranted disparities can only interfere with the development of confidence and trust that is critical to effective crime control policies.

Criminal justice practitioners by themselves cannot eliminate all disparities from the system. The high rates of minority involvement in the system reflect a complex set of social, economic, and community problems. But practitioners do have the opportunity, and the obligation, to address those disparities over which they have some control or influence. This may involve the use of resources, discretion, leadership, and coordination among the relevant actors in the system.

Practitioners also have the challenge of undertaking a leadership role in the way that the nation addresses racial disparities generally. If jurisdictions can implement policies and practices that successfully reduce disparities in the criminal justice system, then policymakers and practitioners in other fields can learn from these successes and adapt them to other social institutions.

Reducing Racial Disparity in the Criminal Justice System

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