



REDUCING
Racial Disparity in the
Criminal Justice System

A Manual for Practitioners
and Policymakers

About The Sentencing Project

The Sentencing Project is a national nonprofit 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 addresses the causes and consequences of racial disparities, 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

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, Former Director,
Neighborhood Defender Service of Harlem, NY

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, Former Assistant State’s Attorney,
Ellicott City, MD

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?

—Marc Mauer, *Race to Incarcerate*¹

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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.

The first edition of this manual was written by Dennis Schrantz and Jerry McElroy, and edited by Jenni Gainsborough and Marc Mauer. The second edition was written and edited by Ashley Nellis, Judy Greene, and Marc Mauer.

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iv

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Table of Contents

Introduction	1
What is Racial Disparity?	1
The Impact of Racial Disparity	2
Section I: Commonly Identified Causes of Racial Disparity in the Criminal Justice System ...	5
Higher Crime Rates	5
Inequitable Access to Resources	6
Legislative Decisions	7
Overt Racial Bias	9
Section II: Manifestations of Racial Disparity at Key Decision Points in the Justice System ..	11
Law Enforcement	11
Arrest, Release and Pre-Adjudicatory Decisions	13
Adjudication and Sentencing	14
Probation and Community-Based Alternatives to Incarceration	15
Jail and Prison Custody	16
Parole and Reentry	18
Section III: A Research Design to Identify and Assess Racial Disparity	21
Section IV: Strategies for Reducing Racial Disparity	25
Law Enforcement	26
Pretrial	30
Prosecution	34
Defense	38
Judiciary	44
Probation	48
Jail and Prison Custody	52
Parole and Reentry	55
Administrative Options	57
Conclusion	62
The Sentencing Project Board of Directors	63
Bibliography	65
Endnotes	66

Introduction

America is the most racially diverse democratic nation in the world. Our gains in economic prosperity, however, are not uniformly shared across society, as whole segments of American communities have become marginalized. 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. Racial and ethnic disparity foster public mistrust of the criminal justice system and this impedes our ability to promote public safety.

Many people working within the criminal justice system are acutely aware of the problem of racial disparity and would like to counteract it. The purpose of this manual is to present information on the causes of disparity and to examine what actions can be taken among criminal justice professionals to reduce disparity. We readily acknowledge that racial disparity is symptomatic of problems in society as a whole, but nevertheless maintain that actions *can* be taken to reduce disparity. This manual is the product of a rigorous process of group discussions and interviews with practitioners in the field as well as a systematic review of best practices and policies in jurisdictions nationwide.

We begin with an overview of some of the identified causes of racial disparity and explore how these are often manifested in the daily operations of the criminal justice system. The manual's central focus is on the specific ways in which 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 for use as a reference manual for practitioners and offers strategies for assessing racial disparity. It also offers practices, procedures and policies to reduce disparity at each stage of the system.

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.

What is Racial Disparity?

Racial disparity in the criminal justice system exists when the proportion of a racial or ethnic group within the control of the system is greater than the proportion of such groups in the general population². The causes of such disparity are varied and can include differing levels of criminal activity, law enforcement emphasis on particular communities, legislative policies, and/or decision making by criminal justice practitioners who exercise broad discretion in the justice process at one or more stages in the system.

Illegitimate or *unwarranted* racial disparity in the criminal justice system results from the dissimilar treatment 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. Moreover, in some cases disparity results from unguarded, individual- or institution-level decisions that are race-based. Structural racism, derived from the longstanding differential treatment of those with characteristics highly correlated with race (e.g., poverty) can cause or aggravate racial disparity as well.

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

- (1) **Acknowledge the cumulative nature of racial disparities.** The problem of racial disparity is one which builds at each stage of the criminal justice continuum from arrest through parole, rather than the result of the actions at any single stage.
- (2) **Encourage communication across players in all decision points of the system.** 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) **Know that what works at one decision point may not work at others.** 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) **Work toward systemic change.** 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.

The Impact of Racial Disparity

Statistics at the community and national level show the cumulative impact of racial disparity through each decision point in the criminal justice system. Decisions made at one stage contribute to increasing disparities at subsequent stages. For example, if bail practices result in minorities being detained before trial at greater rates than similarly situated whites, they will also be disadvantaged at trial and sentencing by having reduced access to defense counsel, community resources, and treatment options. Disparities in the system can be seen in the following examples:

- The widely-discussed phenomenon of “driving while black” illustrates the potential abuse of discretion by law enforcement. A two-year study

of 13,566 officer-initiated traffic stops in a Midwestern city revealed that minority drivers were stopped at a higher rate than whites and were also searched for contraband at a higher rate than their white counterparts. Yet, officers were no more likely to find contraband on minority motorists than white motorists.³

- 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.⁴
- Thirty-eight percent of prison and jail inmates are African American,⁵ compared to their 13% percent share of the overall population.⁶
- Latinos constitute 19% of the prison and jail population⁷ compared to their 15% share of the population.⁸
- A black male born in 2001 has a 32% chance of spending time in prison at some point in his life, a Hispanic male has a 17% chance, and a white male has a 6% chance.⁹

The primary focus of this manual is on decision-making within the adult criminal justice system but the impact of racial disparity is clearly seen in the juvenile justice system, too. While African American youth represent 17% of their age group within the general population, they represent:

- 46% of juvenile arrests
- 31% of referrals to juvenile court
- 41% of waivers to adult court¹⁰

Racial disparity challenges the basic values upon which the criminal justice system rests. To the 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, proactive approaches to building trust between law enforcement agencies and communities are 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 are addressed aggressively and publicly.

A Note about Ethnic Disparities in the Criminal Justice System

The reader will note that this manual discusses racial disparities, which technically exclude ethnic minorities, who also experience differential treatment in the criminal justice system. Unfortunately, criminal justice data rarely disentangle race from ethnicity and, as a result, we know relatively little about the aggregate experience of ethnic minorities. In recent years, these data deficiencies have been partly addressed. There are increasing amounts of information about Latino involvement in the criminal justice system, but much less is documented about Asian Americans and Native Americans, though there are pockets of information for these popula-

tions as well. Where possible, we include these findings in this report. Overall, some of the experiences of African Americans in the criminal justice system are similar to those of various ethnic groups, but not necessarily all.

Commonly Identified Causes of Racial Disparity in the Criminal Justice System

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 enter that system. Criminal justice professionals have the capacity to address 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 decision makers 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.

Causes and correlates of racial disparity in the criminal justice system are manifold. This section describes four of the wider social context and systemic causes of racial disparity which have consistently been identified: (1) higher crime rates; (2) inequitable access to resources; (3) legislative decisions; and (4) overt racial bias.

Higher Crime Rates

Since many crimes go unreported to the police, it is difficult to draw conclusions about race with re-

spect to who offends. The most reliable statistics available are arrest data and these are provided by the Federal Bureau of Investigation's (FBI) Uniform Crime Report (UCR), but these figures omit those who committed an offense but were not arrested. Reported arrest rates for many offenses suggest that African Americans are disproportionately involved in particular crimes. For example, 39% of arrests for violent crime and 31% of arrests for property crime are of African Americans.¹¹ (The rate of arrest of Latinos is not measured in the UCR.) Victimization surveys in which victims are asked to identify the perpetrators of crime are another data source, and race-related findings from these surveys are consistent with arrest data for many offenses.

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 (1) police activity in clearing reported crimes, and (2) crimes police observe themselves. Thus, arrest figures reflect the frequency with which crimes are reported, police decisions regarding offenses on which they will concentrate their attention and resources, and the relative vulnerability of certain crimes to arrest. Despite these limitations, arrest rates are frequently mentioned synonymously with offending rates.

Issues of both race and class have an impact on the likelihood of involvement with the criminal justice system and treatment within the system. For instance, low-income individuals are generally over-represented at every stage of the criminal justice system, and it is widely acknowledged that people of color are disproportionately low-income.

While some claim that minority overrepresentation in the justice system is solely the result of people of color committing more crime, empirical analyses do not support this claim. One scholar recently reviewed 32 state-level studies of the decision to incarcerate and length of sentence imposed, and concluded that there is ample evidence among these studies that, controlling for other relevant factors, African Americans and Latinos are more likely to be incarcerated than whites and, in some jurisdictions, receive longer sentences.¹²

These dynamics are partially true in regard to drug offenses, where African Americans are particularly overrepresented in drug arrests.¹³ Evidence of racially disparate treatment of drug arrestees is apparent by viewing the rate of reported drug use among African Americans. According to self-report data from the U.S. Department of Health and Human Services, African Americans constituted 14% of drug users in 2006, only slightly higher than their percentage in the general population.¹⁴ Yet African Americans represented 35% of those arrested in 2006 for drug offenses,¹⁵ 53% of drug convictions,¹⁶ and 45% of drug offenders in prison in 2004 (the most recent year for which prison data are available).¹⁷

On the whole, study findings suggest that a variety of factors, including law enforcement practices, crime rates, and punitive sentencing policies, contribute to racial disparities in criminal justice involvement.

Another factor that exacerbates the disparate rate of incarceration among minorities is criminal history: the more serious a prior criminal record, the greater the likelihood of receiving a prison term for a new offense. As mentioned, arrest is partly a function of location; areas that experience more public reporting of crime and a greater police presence also have more arrests, so these are also the areas—predominately minority neighborhoods—that experience higher rates of incarceration.

A study of young offenders' arrest, detention and incarceration rates found that, even adjusting for criminal history and seriousness of offense, minor-

ity youth were more likely than white youth to be detained, formally charged, transferred to criminal court and incarcerated.¹⁸ 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 documented the complex interaction among the factors of race, ethnicity, sex, age, and employment on the likelihood of incarceration among offenders in three cities; among other results, the study found significant race effects in two of the three cities examined.¹⁹

In summary, claims that racial disparities in the criminal justice system reflect disparate minority offending in crime are incomplete. If law enforcement resources are heavily focused in poor neighborhoods, if the public safety strategy consists mostly of arrest and prosecution, and if there are insufficient economic, educational, and social service resources, racial disparities in criminal justice outcomes are inevitable.

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.

For example, analysis of trajectories of offending over the life course suggests that while delinquency cuts across race and class lines, the societal response may significantly influence the course of a potential criminal career.²⁰ Decisions regarding the most effective balance of early responses by law enforcement, social services, and community intervention are critical in determining 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, inequitable access to resources can result in very different outcomes between middle-class and low-income individuals even though they may share similar behavioral problems.

Further, individuals and communities with access to resources generally employ an approach to treating behavioral problems outside the juvenile and criminal justice systems. For example, middle-class parents whose child exhibits the kinds of antisocial behaviors that often precipitate delinquency (such as poor grades or association with negative peers) may explore the contributory role of learning disabilities, psychological problems, or substance abuse with appropriate private social service or health care professionals long before the youth becomes delinquent. This is because more resources are available to middle-class parents than to lower-income parents. So, they have access to resources such as private tutors, counseling and therapeutic services to remedy the problems they find. And, in the event of an arrest, alternatives to detention are more readily available in middle-class communities than low-income communities, raising the chances that middle-class youth will be diverted from the system.

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

The misallocation of resources within the criminal justice system can compound the disparate experiences of minority defendants as they move through the system. The examples below illustrate the ways in which misallocated resources can negatively affect minorities:

- Bail and pretrial release screening instruments and release policies may be biased toward middle-class values and resources. For instance, a release system that utilizes electronic monitoring which requires a telephone in the home would eliminate this pretrial release option for those without a phone. In the juvenile justice system, many screening instruments require that a youth be released to a legal guardian. If the child is from a single-parent home and the parent is working—as is frequently the

case in minority homes—the youth will be detained instead of being released. This draws more minority youth deeper into the system.²¹

- After arrest and prior to sentencing, the resources necessary to treat addictions, consult with psychologists or hire expert witnesses and investigators are often unavailable through public funding. This multiplies the disadvantages for indigent defendants, who are predominately minorities. Also, public defenders with high caseloads may not be able to develop individualized alternative programs or sentencing options.

Legislative Decisions

Legislatures at the federal, state, and local level create the criminal justice system by enacting the laws that define prohibited behavior, the penalties for violating those laws, and the processes by which cases are to be disposed and sentences are to be determined. County and city legislatures also 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. We now briefly review a few areas that have been significant in this regard.

The War on Drugs

The series of drug policies that collectively became known as the War on Drugs has had a profound impact on both the number and composition of people who are incarcerated for a drug offense. As we have noted, people of color are imprisoned for drug offenses at rates that greatly exceed their proportion of the drug-using population. This is due in part to law enforcement practices, but is also related to drug sentencing policies that have been enacted since the 1980s at both the federal and state level. Every state now has some form of mandatory sentencing, often applying to drug offenses. At the federal level, the mandatory five- and ten-year sentencing policies adopted for crack cocaine offenses in the 1980s have been the subject of much analysis and criticism for the racial disparities they produce relative to powder cocaine offenses. While the federal sentencing guidelines for crack cocaine offenses were amended by the U.S. Sentencing Commission in 2007, the legislatively enacted mandatory penalties are still in

place. Many analysts have contended that the racial disparities resulting from these laws could have been predicted in advance had lawmakers engaged in a rational assessment of likely outcomes.²²

Had these predictable effects been identified and considered early on, 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 local drug problems. More reasonable distinctions between minor and major drug offenses might have been enacted. Studies indicate that many drug sellers are in the drug trade primarily to support their own addiction: a survey of federal and state inmates in 2004 showed that 17% of state and 18% of federal inmates committed their offense to obtain money for drugs. About half of the inmates (53% of state and 45% of federal inmates) met the *Diagnostic and Statistical Manual of Mental Disorders (DSM-IV)* criteria for substance abuse or dependence.²³ The figures among those in jail are even starker: 68% of jail inmates surveyed met the criteria for substance abuse or dependence.²⁴ In many of these cases, enrollment in a substance abuse treatment program would have been a more constructive option than prison, where offenders are likely to receive insufficient treatment for their problem. A range of alternative responses for minor offenders, including broadly available drug treatment, might have been established. The discretion required to accurately distinguish between low-level drug sellers 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. Large-scale public financing of policing and incarceration might have been shifted to a significant degree for education, prevention, and treatment programs in the communities where the problem was most pronounced.

Three-Strikes Legislation

In 1993 states began passing laws that assign mandatory sentences of life without parole for three-time repeat felony offenders. By 1996, twenty-five states had passed some type of three-strikes legislation, and

in some states a mandatory life sentence resulted after two felony offenses. Not unlike many criminal justice policies that quickly gain public support, the momentum for three-strikes legislation was largely prompted by a single but highly publicized event: the abduction and murder of Polly Klaas in 1993 by a repeat offender in California. Legislation motivated by such tragic incidents can encourage emotional, overly-punitive policy responses. The end result of three-strikes laws around the nation has been the costly and excessive imprisonment of many offenders who are near or at the end of their criminal careers anyway; these consequences have fallen disproportionately on minorities. What is more, the legislation appears to have had no effect on lowering crime.²⁵

Overreliance on Incarceration

The political furor over crime during the past two decades has driven legislatures to pass increasingly punitive laws resulting in enormous growth in prison and jail populations. At the end of 2006, one in 31 individuals was under some sort of criminal justice supervision (i.e., prison, jail, parole, or probation),²⁶ and the majority of them were people of color. The 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. Very little by way of job training, rehabilitation, or education occurs in prison, so when inmates are released they face myriad obstacles as they attempt to reenter society.

Sentencing practices need to consider both the short-term and long-term consequences of choosing imprisonment over sentencing alternatives that have demonstrated success. Thorough legislative impact analyses such as legislatively mandated racial impact statements would identify probable disproportionate racial consequences and signal the need to seek alternative problem-solving strategies to eliminate or significantly reduce such effects. In 2008, both Iowa and Connecticut passed legislation that requires lawmakers to consider the impact of proposed sentencing laws on racial and ethnic groups. Requirements to conduct racial impact analyses can promote a more deliberative strategy development

process that encourages the use of public and private resources in the community.²⁷

Overt Racial 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, attitudes, conduct, assumptions, strategies and policies of criminal justice agencies. Instances of overt bias can lead in turn to the improper use of discretion among actors in the criminal justice system. Certainly, in the past two decades, much of the overt racist language and attitudes once common in many parts of the system have come to be considered out of bounds. Despite safeguards now in place to reduce or eliminate overt racism, it can still flourish behind the scenes in more subtle ways. The need to address racism wherever and however it manifests itself is a basic component of a strategy to reduce racial disparity.

Bias in the criminal justice system may take many forms. For example, in policing, it can manifest itself in poor interactions with the community which denote lack of respect. In the courtroom, the ways in which minority defendants or attorneys are addressed can communicate attitudes suggesting second-class status. In the prison, officials who have negative interactions with inmates' family members can increase levels of hostility for inmates, families, and staff.

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 suggest that overt bias in criminal justice decision-making has declined, and that racial disparity is now essentially a consequence of policies, strategies, and decisions that unintentionally and indirectly produce racially disparate effects. While

much of the research that has been conducted in the recent past tends to support that belief, racist attitudes still persist. For example, in 2000 the U.S. Supreme Court 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 which recommended a sentence of death instead of life in prison. 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 Latinos.

Guarding against racist attitudes among criminal justice professionals 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 should be no relaxation of training in human relations, of orientation to the cultures and subcultures of the people with whom criminal justice agents interact daily, and of supervisory oversight designed to detect and correct bias in the attitudes, speech, and behavior of subordinate personnel.

Manifestations of Racial Disparity at Key Decision Points in the Criminal Justice System

There are many opportunities for subjective decision-making to affect the racial composition of those who enter the criminal justice system. In this section we discuss each stage of the system and the ways in which discretion can impede objective decisions.

Discretion is an important component of the criminal justice system and is necessary for efficient system flow. It is neither desirable nor possible to eliminate discretion throughout the criminal justice system; professional judgment is a core component of making day-to-day operations manageable. Nevertheless, individual discretion can lead to racial injustices. These can be safeguarded if discretion is well-informed and monitored. What is needed is an introspective look at the substance of discretion and to find ways to either curb inappropriate use, such as through the development of standards, or to use discretion affirmatively to reduce racial disparity. In this section we identify decision points where discretion is exercised, note the system actors involved, describe how individual decision making can produce a disparate impact, and offer ways to offset the harms that can result from the inappropriate use of discretion. In doing so, there are several broad questions that can guide decisions, including:

- Are 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 on one or more racial groups?
- Do factors influencing decisions provide an opportunity for intentional or unintentional bias?

If so, how can those influences be eliminated or moderated to lessen the disproportionate impact?

Law Enforcement

The police are the first and most visible agents of the criminal justice system. They are charged with responding to calls for service, monitoring citizens' behavior in public, intervening with warnings, referrals, or arrests when violations of law are suspected or observed, and assembling evidence for the prosecution of cases resulting in arrest. To carry out these responsibilities, law enforcement agencies may prioritize high-crime areas; these neighborhoods are often heavily populated by minorities. Some speculate that increased police presence in minority neighborhoods draws more minorities into the system simply because there are more eyes on the street in these neighborhoods. Police exercise broad discretion in their decision of who to arrest and this can be problematic if safeguards are not in place to protect the community from tendentious law enforcement. We offer the following suggestions as ways to counter the impact that misguided discretion can have at this stage of the system.

Engage the Community

There is a tendency to assume that police are the sole participants in their own strategic and tactical decision-making. In fact, those decisions are subject to review and approval by superiors, including the office of the prosecutor, and frequently subject to positive or negative reactions from the legislative and judicial branches, as well as the public. Transparent and independent oversight of police departments fosters a sense of trust and accessibility among the public and ensures that police remain accountable to those they

are tasked to serve. Citizen oversight committees are not uncommon in other arenas such as medicine, law, and education, and can be used to dispel the “code of silence” that often permeates law enforcement agencies. There are currently more than one hundred citizen oversight agencies around the nation.²⁸

In recent decades, programs directed at community-oriented policing have emerged to foster better relations between police and the public. In some communities, groups of residents and area businesses work with police in formulating these strategic and tactical decisions and reviewing their effects. Advocates of community-oriented policing insist that such involvement should be the norm and they often work with police agencies and community organizations to cultivate it.

Require Cultural Competency Training

Police-community relations are complicated by many factors, among them a lack of knowledge among police about minority cultures and language barriers. Police officers often work in areas that are culturally different from their own, yet most police training programs offer only minimal training on cultural competency, if any. In the absence of a more specific orientation to the language, norms, values, and traditions of other cultures, officers can misunderstand residents’ attitudes as disrespectful of law enforcement. As a result, relations between the police and the community can become seriously impaired. Ongoing cultural competency training of police officers can help in this situation. Language barriers can be overcome through the use of language assistance technology and multilingual staff.²⁹

While some of the problems of community-police relations can be attributed to ignorance, not all can. Mere education will not eliminate all race-based policing. Support from one’s superiors in a police department for culturally knowledgeable policing can be an effective strategy toward objective decision making on the street. A policing study in St. Petersburg, Florida found that disrespect toward minorities was statistically lower than police disrespect toward whites, and the authors attributed this to the police chief’s visible work toward suppression of police abuses.³⁰

Eliminate Racial Profiling

Patrol officers may stop drivers for apparent traffic violations but use the occasion to search the vehicle for drugs. These pretext stops have become a matter of considerable concern based on the suspicion, supported with empirical data, that people of color are overrepresented among those who are stopped, cited, searched, and arrested.³¹ Most studies of traffic stops find, however, that discovery of contraband such as weapons and drugs is no more likely to be found among white drivers than among African American drivers.³² One study has also found that racial profiling was significantly higher in instances where minorities were driving in white, affluent neighborhoods.³³ More recent studies examining the influence of Hispanic ethnicity on arrests find biased policing practices among this group as well.³⁴

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

- Is a police agency’s decision to focus attention and resources on particular types of crimes or disorder likely to have a disproportionate impact on minorities? If so, are there alternative ways of addressing the problem that will lessen the negative impact on minorities?
- Are representatives of the affected communities given an opportunity to understand and comment upon the enforcement tactics used?
- Are representatives of the communities with significant police presence involved in considering the strategy and its alternatives? If so, are these representatives willing and able to support and cooperate with the strategic plan?
- 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?
- Is cultural competency training a required component of police training? Are ongoing trainings required?

- 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?

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 decisions are made that can affect 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 could result in a decision to void the arrest by declining to bring charges; prompt 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 pre-trial services programs often leads to an assumption that money 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 low-income individuals—who are disproportionately minorities—and result in unnecessarily high rates of detention. Detention,

in turn, increases the likelihood of conviction and incarceration.³⁵

Early involvement of defense counsel facilitates an attorney's understanding of the case, counseling the client, and initiating appropriate plea negotiations with the prosecution as early as possible. A careful review of options at this point can result in a decision to defer prosecution on the condition that the defendant successfully completes 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 can be done to correct racial disparity, the following questions should be helpful:

- Are defendants represented by competent counsel at arraignment?
- Do defendants have the benefit of a pretrial assessment? Is it conducted according to professional standards?
- Do the prosecutor and the judge weigh the decision to release on bail or to detain based on flight risk and/or risk of pretrial offending, rather than any other reason? Do the factors considered in assessing such risks have a negative impact on low-income, minority defendants?
- Are pre-adjudicatory diversion and alternatives to detention available for *all* defendants, regardless of income, geography, or race? Are prosecutors and judges aware of these options?
- Are representatives from minority communities encouraged to participate in identifying and developing community-based programs and resources that could be used instead of detention when appropriate?
- Do members of the courtroom workgroup (i.e., law enforcement, pretrial services, prosecutors, defense attorneys, judges, and community-based service providers) understand each others' roles at the pre-adjudication phase? Are there adequate

structures and procedures in place to foster effective interaction among these individuals?

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. Ensuring that minorities are not disadvantaged in this process is critical. Misdemeanors, which account for the 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 harsher treatment in subsequent cases. The large number of cases at this level means that 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.

14

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 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. There is some evidence that sentencing outcomes are dependent on type of counsel (i.e., no counsel, public counsel, or private counsel) even when relevant factors are controlled. Since minorities are less likely to have a private attorney, one who generally has more time to devote to the case than a public defender, it is especially important to monitor this decision point for racial disparities.

It is also essential that community-based service organizations, especially those serving minority communities, are available for use by the courts as components of community-based supervision and

service programs, and that their services are supported with public funds. 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 qualitative study of probation presentence reports in juvenile court cases in a northwest city illustrates the means by which racial bias may influence sentencing outcomes. In this study of probation officers' assessment concerning motivation for offending by race, analyzed by reviewing the narrative descriptions of juvenile offenders, researchers found that probation officers tended to portray the delinquency of black youth as stemming from negative attitudinal and personality traits, while portrayal of white youth stressed the influence of the social environment. Black youth were judged to be more dangerous, which translated into harsher sentences than for comparable white youth.³⁶

Of growing concern is the sentencing of youth to life without the possibility of parole. Recent data suggest that, aside from the constitutional issues associated with this practice in general, it is racially disparate as well: black youth serve life without parole sentences at ten times the rate of white youth.³⁷

Finally, in recent years special purpose courts have addressed specific issues, such as drug cases in the instance of drug courts. These courts are based on the premise that when a court concentrates on a specific problem, that enables it to better hold offenders accountable for their behavior, and also to compel their participation in treatment, restitution, community service, and skill development programs. There is a concern that these courts will bring people into the criminal justice system whose problems would be better addressed outside it (i.e., widening the net), and that they will use resources that could be more effectively used in the community. Once the decision to adjudicate a case in court has been made, it is important that factors used to determine a defendant's eligibility for transfer to

specialty courts do not inadvertently discriminate against minorities.

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

- Is publicly-supported legal counsel assigned at arraignment or beforehand?
- Do the rules of the court provide for full and timely evidence discovery to enable effective defense participation during plea negotiations?
- Is there a range of community-based alternatives to detention available in the lower and superior courts? Is this range offered at the same rate to minorities and nonminorities with similar offenses and offense histories?
- Are community-based organizations that primarily serve minorities encouraged to participate with the court system?
- Do public funds support community-based detention alternatives?
- Are defense attorneys provided with adequate resources to participate effectively in the trial, plea negotiations, and sentence negotiation processes?
- Have the courts, prosecution, defense, and probation service professionals reviewed the factors that can influence bail decisions and plea and sentence negotiations to ensure that inadvertent racial bias is not an issue?
- Are specialty courts used in the jurisdiction? Have the process and factors used to determine eligibility for transfer to these courts been reviewed to eliminate any racial bias? Do minority defendants have equal access to them?
- Does the probation office involve community resources in sentencing plans? Are community resources such as faith-based groups, substance abuse counseling programs, social service agencies, and the like accessible in high minority areas?

Probation and Community-Based Alternatives to Incarceration

Probation

Probation is the most frequent sentence for people convicted of misdemeanors and many felonies; as of year-end 2006, over 4 million people were on probation.³⁸ In line with overall growth in the percent-

age of the population under criminal justice supervision, this figure grew by 30% between 1995 and 2006.³⁹ Among probationers, 55% are white, 29% are African American, and 13% are Latino.

A growing number of faith-based organizations and not-for-profit community-based groups are reaching out to the courts and to probation departments to serve as supervision and service agents for defendants who are sentenced to probation. This is a trend that should be encouraged both to reduce overreliance on incarceration and to enhance opportunities for probationers to lead a law-abiding lifestyle.

A 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. Experimental research on unconscious stereotypes of police and probation officers' beliefs about minorities and deserved punishments suggests that such beliefs can have profound effects on sentencing outcomes.⁴⁰

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.

Probation Violations

Incarceration for probation violations has 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 low-level misdemeanor, or when the violation is a consequence of the offender's failure to comply with conditions of probation (i.e., a technical violation), the decision to seek incarceration

tion for the offender is often discretionary on the part of probation officials. Policies governing these discretionary decisions must be put in place and reviewed to determine if and how they might have a disproportionate impact on minority offenders. A study of Wisconsin probationers indicates that African Americans were nearly three times as likely as whites to be revoked from probation, especially for drug offenses.⁴¹ There is also a critical need to develop a range of graduated sanctions which can be invoked by probation officers in response to non-compliant behavior by probationers. In the absence of such choices, the probation officer is faced with very limited options.

Alternatives to Incarceration

Persons of color, especially African Americans, are less likely than white offenders to receive a sentence that keeps them in their communities to participate in programming and are more likely to be incarcerated. This may be related to relevant considerations such as prior record, or may be the result of bias or limited sentencing options. The consequences have grown more obvious over time as minority communities experience reduced social cohesion, severance of important family ties, income losses, and a growing population of children of incarcerated parents.

Increasing fiscal constraints have forced policymakers to reconsider their overreliance on prisons. A budget analysis of offender sentences in California conducted in the 1990s concluded that had 25% of persons sentenced to prison for less serious offenses (such as parole violations, minor drug crimes, or nonviolent property crimes) been diverted to community-based programming, the state could have saved 17-20% of its operating costs.⁴²

Aside from fiscal considerations, the public supports alternatives to incarceration in many circumstances. Numerous polls tapping public attitudes about preferences for treatment versus prison have come to the same conclusion: the public supports rehabilitation over incarceration for low-level drug offenses.⁴³ Findings from a 2007 public opinion poll indicate greater support for rehabilitation-based services over incarceration for juvenile offenders as well.⁴⁴

In assessing how minority offenders might be disadvantaged in regard to receiving community corrections sentences versus incarceration, the following questions should be helpful:

- Have probation officials reviewed the factors and processes that influence their sentencing recommendations, and are they satisfied that their decisions will not have an unwarranted impact on minorities? Are objective assessment tools in place to minimize any risk?
- 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?
- Do probation departments have a good relationship with the communities where large numbers of offenders reside? Do probation departments understand the local culture in these communities? Can they identify local resources that could be effectively incorporated into a community correction sentence, and assist local organizations with ways 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 probation officials explained 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 minority communities?
- What alternatives to incarceration exist, especially in minority communities?

Jail and Prison Custody

African Americans and Latinos comprise a dramatically disproportionate share of those in jail and

prison. Of the more than 2 million inmates who are incarcerated, 38% are African American, 19% are Latino, and 37% are white.⁴⁵ This compares to a national population that is 13% African American and 76% white. Latinos, who can be of any race, comprise 15% of the population.⁴⁶

While the removal of certain offenders from the community clearly is appropriate, incarceration is often overused, especially for low-level, nonviolent offenders. A snapshot view of most prisons and jails reveals that they are occupied by a disproportionately large number of minorities. And for those who are in prison, there is relatively little offered by way of education, substance abuse, or vocational programming. This means that they are at a great disadvantage for success upon release. Ideally, inmates could receive the necessary education, substance abuse and mental health treatment, and vocational training that would prepare them for law-abiding futures upon their release. Because minorities are more likely to be in prison than are whites, treatment while they are incarcerated is an important component of reducing overall disparity. Individuals who do not receive appropriate services in prison face greatly increased odds of returning to jail and/or prison for a new offense.

As prison and jail populations have increased, the resources available for institutional education, counseling, and skills development programming have not kept up with the increased demand. This intensifies the problems of prison management, and returns prisoners to the community even less equipped for effective and law-abiding lifestyles than when they were first imprisoned. Since 1980, drug-related offenses have been the fastest-growing crime type for which individuals are incarcerated. Since many drug crimes are committed to support a drug addiction, it is essential that drug rehabilitation programs be a priority in prisons. Again, the absence of programming has an even greater negative impact on minorities because of their greater likelihood of incarceration, especially for drug-related offenses. A prison system's failure to address addiction while inmates are incarcerated is a virtual guarantee of return to substance use and a high likelihood of return to prison.

Self-report data reveal that approximately twenty percent of inmates in prison or jail have been diagnosed with a mental health problem (such as major depression, mania, or a psychotic disorder), and approximately 50% exhibited symptoms of a mental health problem in the previous year.⁴⁷ Substance abuse problems are common as well. In another assessment, researchers reported that roughly half of state and federal prison inmates meet the *DSM-IV* criteria for drug abuse or dependence.⁴⁸ These inmates constitute a special challenge for correctional personnel, who often are untrained in understanding their behavior or needs.

Some research suggests that African American inmates tend to be assigned more severe mental health diagnoses in comparison to whites even when they exhibit similar symptoms. 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 psychological services positions, and may result in a different assessment of the potential dangerousness of the inmate.⁴⁹ Some cite the inaccessibility of mental health services in minority communities as a reason for their overrepresentation in the criminal justice system.⁵⁰

Minorities may enter their period of incarceration with more acute and untreated problems than non-minorities because of the relative lack of services in their communities. Regardless of the reasons for overrepresentation, prisons and jails are often significantly lacking in the resources needed to correctly diagnose those with mental health or substance abuse problems.

Ideally, services in prison and jail should help inmates cope with issues related to mental health needs, substance abuse problems, educational needs, and job skills training. Selected programs should be research-based and implemented with fidelity to their original design. Ideally, services that are offered in prison should be continued in the community upon release. The negative effects that inmates experience when they are isolated from their community can

be eased by fostering 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 provide opportunities for treatment and skills development. In recent 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.

Racial tensions within prisons sometimes arise from rival gang members being housed in close proximity with one another. For many years, the response to California's interracial prison violence was to temporarily segregate new and newly transferred inmates according to race. However, in 2005, the United States Supreme Court ruled that race-based segregation was unconstitutional and so the state has since abandoned this procedure.⁵¹ Implementation of research-based gang intervention programs within prisons can reduce the influence of gang membership on prison violence. Diversity in hiring practices can also help to mitigate these tensions, along with cultural competency training for all corrections staff.

In assessing how prisons and jails might be managed more effectively, the following questions should be helpful:

- Does the institution's administration recognize the persistence of multi-layered racial tensions within the jail or prison? Has the administration implemented ongoing training designed to reduce such tensions?
- Are diverse hiring practices a priority, knowing that a diverse correctional workforce can reduce racial tensions between staff and inmates?
- Has the administration implemented research-based gang intervention programs designed to defuse internal gang conflicts and the pressure on inmates to affiliate with gangs?
- Do social service staff in the institution have sufficient resources to serve inmates under their care?

- 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?
- Are drug and alcohol treatment programs readily available for inmates in jail or prison? Is participation strongly encouraged for substance abusers?
- Are there education, counseling, and skills development programs available and encouraged in prison to adequately prepare inmates for success when they return to the community?

Parole and Reentry

Recent statistics document that approximately 800,000 adults are on federal or state parole; of these, 39% are African American, 41% are white, and 18% are Latino.⁵²

There are three types of decisions made by parole authorities in discretionary parole systems⁵³ which bear significantly on the involvement of minorities in the criminal justice system: (1) when offenders will be released from prison to the community, (2) the release plan which the offender must follow when he or she returns to the community, and (3) the determination of the parolee's compliance with release conditions.

Since 1980, probation and parole violations have doubled as a source of admissions to prison and now represent one third of all admissions. One research study found that people of color return to prison more often than whites for technical violations.⁵⁴ The authors of this study cautiously attribute this to the degree of discretion exercised at this decision point, but note that more research is needed to be more confident of the findings.

More recently, practitioners, policymakers, advocates, researchers and the public have a growing interest in supporting the reentry of inmates back into society after a period of incarceration. Reentry programs that focus resources in communities where offenders are released serve to ease the transition, help individuals reclaim their lives, and reduce the likelihood of reoffending. Just as investing in pro-

programming at the front end of the system can prevent individuals from entering prison, it is essential to require programming at the post-incarceration stage to reduce the chances of returning to prison for new crimes.

The following questions can be used as a guide to determine whether minority offenders are treated differently than non-minorities in parole and other post-incarceration actions:

- Are racial disparities present in discretionary parole release decisions?
- What guidelines structure discretionary parole decisions, and do they contain factors that could have an adverse impact on minority offenders?
- Do parole authorities make effective use of community service resources in preparing release plans for persons returning to the community? Is special attention paid to inmates returning to minority communities, where resources are likely to be more limited?
- What guidelines structure parole violation decisions, and do they contain factors that could have a negative impact 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?
- Are adequate substance abuse, mental health, vocational, and educational resources available in the communities where offenders are likely to reside upon their release?

A Research Design to Identify and Assess Racial Disparity

Research should 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 may be readily apparent. Additionally, the evidence may point to differing rates of disparities at different stages of the criminal justice system. The following framework outlines a means by which local jurisdictions can begin a five-step process to address this issue. These five steps are:

- (1) Determine whether the rate of minorities involved at any stage of the criminal justice system is disproportionate;
- (2) Assess the decision points where racial and ethnic disparities occur;
- (3) Identify plausible reasons for any disparity identified and the extent to which it is related to legitimate public safety objectives;
- (4) Design and implement strategies to reduce disparities; and
- (5) Monitor the effectiveness of strategies to reduce disparities.

1. Identify Stages in the Criminal Justice System with a Disproportionate Representation of Minorities

In this section, we offer a method for tracking racial disparities through a hypothetical jurisdiction's criminal justice system, acknowledging that difficulties with data collection and acquisition can impede one's ability to complete each step thoroughly. Ideally one would be able to track individual cases through the system, but many criminal justice data

systems are not constructed to allow for this. At a minimum, every attempt should be made to produce an annual statistical report for each stage of the system. The matrix provided in Figure 1 serves as a basic guide to determine the extent of the problem at each stage of the system.

The preliminary step toward completing a matrix like the one below is to produce a count of the number of people at each stage of the system and to disaggregate the totals by race. Then one can compare this to jurisdiction-level data from the general population and to the preceding stage of the justice system to determine what differences emerge, if any.

Consider a hypothetical jurisdiction in which 15% of the population is African American. In this case we only examine disparity rates for African Americans, but generally all races and ethnicities should be counted. Column A in Figure 1 lists each decision point in the system. For simplicity, we provide six possible decision points, though in reality there are more points at which individuals are released or proceed further into the system. Column B provides the percentage of individuals at each of these six stages who are African American. Column C provides the percentage of individuals in the immediately preceding stage who are African American. In Column D, the number from Column B is divided by the number in Column C (B/C) to produce the disparity ratio. This final column is the most accurate method for determining racial disparities because it takes into account the rate of disparity in the previous stage.

In Column D, a disparity ratio *greater* than 1 means that African Americans are disproportionately represented at this stage in comparison to their proportion at the previous stage. A ratio of less than one means that African Americans are underrepresented at this stage compared to the previous stage.

As one proceeds through the system in this example, it is clear that disparities are most severe at the point of arrest (where African Americans are arrested at a rate twice their share of the general population) and the point of incarceration (where African Americans are 11% more likely to be incarcerated). Conversely, African Americans are *underrepresented* at the stage of probation (0.84), which is not surprising since probation sentences reflect those persons not sentenced to incarceration. This display of rates disaggregated by race, while fictional in this case, is typical of many criminal justice systems around the country.

In constructing this type of matrix to observe racial differences at different stages of the criminal justice system, the base population one uses could be different from the general population figures used in the present example. For example, if one wished to focus on youth in the juvenile justice system, it would be more appropriate to use as a base the population of juveniles under 18 years old.

2. Assess Key Decision Points

Assess the decision points where discretion, policy choices, or resource allocation may contribute to

overrepresentation. 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 earlier decisions may have a negative impact on minorities. For example, analysis of court data at this stage might reveal a pattern whereby low income individuals are frequently unable to afford set bail amounts or are not released on their own recognizance. Investigators can hone in on this decision point and carry their investigation to the next stage to identify possible causes of this.

3. Identify the Cause(s) of Disparity

After identifying the decision points at which disparity exists and estimating the extent of that disparity, the next step is to identify possible reasons for it. These might include changes in administrative or legislative policies that disproportionately affect minorities, lack of community resources for crime prevention and early intervention, increased surveillance in minority neighborhoods, area crime rates, and socioeconomic factors, among others.

To the extent that these data are available, multivariate regression techniques can be used to control for outside influences such as the crime rate. If disparity persists even after these factors are considered, its roots should be examined for other explanations.

Continuing with our example from the previous stage, if low-income individuals are frequently not represented by a competent, publicly-supported at-

Figure 1. Racial Disparity Matrix

Column A	Column B	Column C	Column D
Decision Point	Percentage who are African American	Percentage at preceding decision point who are African American	Disparity ratio
Total Population	15	N/A	N/A
Arrest	30	15	2.00
Detention	35	30	1.17
Prosecution	37	35	1.06
Conviction	45	37	1.22
a. Probation	38	45	0.84
b. Incarceration	50	45	1.11

torney at the court appearance during which bail is determined, fewer of them might be released on their own recognizance, or the bail amount that is set may be higher than they can afford. Thus, low-income people, who are disproportionately minorities, will be more likely to be detained for failure to post bail. At this stage, a possible cause for this disparity has been identified.

Exploring the effects of policies and practices may be accomplished by a variety of techniques, such as observing practitioners at work, interviewing them, reviewing risk assessments or other documents that might be biased against minorities, or bringing practitioners 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.

It is likely that there are *many* reasons—some far beyond one’s control—for which disparity exists. Identifying all of them is probably unrealistic in many cases. However, this should not dissuade practitioners from attempting to remedy causes of disparity that are identified. Inability to fully identify each cause should not block work to reduce disparity.

4. Design and Implement Strategies

Design and implement strategies to reduce overrepresentation by focusing on the decision points where disparity exists. Selected strategies should be theoretically related to the decision points at which disparity is observed. That is, if racial disparities are observed only at the point of arrest, it is unreasonable to expect a greater diversity among prison staff to have an impact on disparity at the arrest stage (although greater diversity among prison staff is a positive move regardless). Rather, focused work on eliminating racial profiling is more likely to reduce minority overrepresentation at arrest.

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 of data, policies, and personnel is likely to identify influences and potential responses to them that were not recognized initially. In this way, progress can be made incrementally and system improvements can take hold over time.

In seeking to identify and correct the sources of racial disparity, it is useful to remember that substantial, lasting changes can only be effective if they are implemented throughout the system. Since there will be turnover within agencies, it is important that attention is paid to issues of disparity at all levels of an agency, department, or organization. While deep-seated beliefs are difficult to change, professional behavior *can* be changed. Overt bias is less likely to manifest itself as long as lines of communication remain open. Personal relationships can break down stereotypes within agencies and between agencies and communities. A diverse leadership can also aid in challenging attitudes and stereotypes. This will often result in a gradual but significant positive impact on institutionalized attitudes.

Strategies for Reducing Racial Disparity

In this section, we offer suggestions for reducing racial disparity at each decision point in the criminal justice system. We follow the same decision points from the previous section but expand the discussion to incorporate a broader set of decisions within each stage of the criminal justice system. The reader will note that much work to reduce disparity can be accomplished at each decision point.

Following a list of the possible focal points we describe how some of the options may reduce disparity and why they are important. We then offer select best practices from the field that have been demonstrated through empirical analysis to show promising results in reducing disparity.

The select “best practices” summarized in this section were collected through review of published reports and outcome analyses followed by telephone interviews with program managers and/or other staff from each particular agency. Collectively, these represent programs and practices that are working in the field, at each decision point, to reduce racial disparity.

The best practice strategies in this section are listed below, along with the agencies or organizations responsible for implementing them.

Law Enforcement:

Respectful Policing Practices
New York City Police Department
South Bronx Precincts

Pretrial:

Pretrial Risk Validation Study
Minnesota Fourth Judicial District

Detention Reform Initiative
Multnomah County Department of
Community Justice
Juvenile Services Division

Prosecution:

Prosecution and Racial Justice Program
Vera Institute of Justice

**Challenging Disproportionate Representation
in the Jury Pool**
San Diego District Attorney’s Office

Defense:

Reducing Racial Bias in Policing
Metropolitan Public Defender Services

Reducing Racial Profiling in Police Stops
Gloucester County, NJ, Office of the Public Defender

Litigating Race Manual Education Project
Kentucky Department of Public Advocacy

Racial Disparity Project
The Defender Association
Seattle, WA

Judiciary:

**Northeastern University Study of the Enforcement
of the Massachusetts “School-Zone” Drug Law**
Dorchester Division of the Boston Municipal Court
Department

**Disproportionate Minority Contact/Juvenile
Detention Alternatives Initiative**
Pima County Juvenile Court

Probation:

Juvenile Detention Alternatives Initiative
Santa Cruz Probation Department

Spanish Speaking DUI Court
Judicial Branch of Arizona, Maricopa County, and
the Maricopa County Adult Probation Department

Prisons:

Erasing Racism in the Ohio Prison System
Ohio Department of Rehabilitation and Correction

Administrative Options:

Delaware Racial and Ethnic Fairness Summit
Delaware Criminal Justice Council

Racial Impact Statements
Minnesota Sentencing Guidelines Commission

**Commission on Reducing Racial Disparities in
the Wisconsin Justice System**
Wisconsin Governor’s Office

Law Enforcement

Research and Assessment of Disparity

Undertake a research process similar to that described in the previous section which focuses more comprehensively on law enforcement practices. To determine if members of minority groups are disproportionately represented at key police decision points, study race differences at as many decision points as possible, such as police encounters with the public (i.e., traffic and pedestrian stops and searches). If disparities exist, police agencies can implement the following:

- In addition to all other routine information collected at traffic and pedestrian stops, institute concrete measures to monitor and record race and ethnicity information as well. This will aid in determining the presence and extent of racial profiling.
- Provide all persons who are stopped by police with written information regarding their individual rights and process for filing complaints.
- At each point where disparity exists, initiate a process with police department managers, line staff, and representatives from minority communities to examine policies, guidelines, and practices that could be contributing factors.

Development and Use of Arrest Alternatives

- Research the opportunities available for citizens who are at risk of arrest but for whom arrest is not appropriate. This will help to ensure that arrest alternatives are available in all neighborhoods, especially minority neighborhoods.
- Advocate for expansion of alternatives to arrest in instances where arrest is inappropriate but often used, such as status offenses for juveniles, or encounters with mentally ill or homeless persons.
- Encourage community- and faith-based organizations, especially in minority communities, to develop programs that may be used by police

officers and supervisors as alternatives to arrest in cases where police have discretion. Develop guidelines to help the officers use these arrest alternatives fairly.

- Engage members of the community in the development of problem-solving responses to local crime problems, particularly in regard to drug use and selling.

Implementation of Cultural Competency as Core Component in Operations and Training

- Adopt culturally-specific orientation training for police personnel working in areas with substantial numbers of minority group members. The training should introduce the police to the residents, organizations, and cultural characteristics of the neighborhoods, to enhance their understanding of the community culture.
- Develop early warning systems to identify officers for whom excessive complaints regarding misconduct have been filed and initiate remedial action when necessary.
- Focus the attention of police chiefs, supervisors and managers on the importance of racially equitable police practices.
- Use the departmental database to monitor activity by race and be alert to patterns of disparate treatment by street officers. If and when patterns emerge, ensure that a process is in place to investigate the reasons and take necessary action quickly. 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 culturally competent and educated about issues related to race and race relations.
- Expand the number of minority group members within the police agency so that the agency's demographic profile is similar to the population.

Educate the Public on Development of Approaches to Reduce Disparity

- Work with members of the community to launch public education campaigns on the topic of race relations and cultural competence. Public education campaigns should describe what the police department is doing to ease racial tensions.
- Advocate for additional funds to be used for initiatives related to racial fairness and sensitivity, and to ensure legislative support for these goals and objectives.

Development of Community Policing Approaches

- Adopt principles of policing that comport with the community policing perspective.
- Create structures and processes, especially in high crime neighborhoods, that 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 neighborhood structures and public forums to anticipate racially and ethnically disparate impacts from proposed problem-solving strategies and tactics.
- Initiate public forums on the topic of race that encourage candid discussion. These can serve to sensitize the community and police to cultural and racial conflicts present in the area. From the law enforcement agency perspective, design a human relations approach by using police advisory boards to open lines of communication with the community. The community should also have the opportunity to assess law enforcement strategies and provide feedback.

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 incidents such as public

drunkenness and loitering, officers have no choice but to either arrest or ignore the behavior. Expanded options must be in place for discretion to be most productive.

Whatever the volume of resources committed to race relations in a community might be, the critical issue is access to opportunities to influence police decision-making and operations. Residents will have more trust in law enforcement if they are more involved in developing and monitoring police practices in their area. These collective desires are consistent with the principles of community policing, and should be advocated for by leadership in law enforcement.

Cultural acclimatization can strengthen positive bonds between the police and the community. In each community where minorities are prominently represented, cultural familiarity programs can be constructed for all police personnel. These should be designed and implemented with representatives of the community to accomplish the following:

- Introduce officers to familiar local faces;
- Orient officers to the language, culture and traditions of the community;
- Introduce officers to representatives of community-based organizations;
- Identify the problems of greatest concern to the community;
- Learn about police tactics that are considered unnecessarily intrusive;
- Explain styles of language, composure, and interactions that are culturally-specific and might be construed as disrespectful in the absence of knowledge about them.

Such orientations can be valuable to police officials who are otherwise exercising their discretion in an unfamiliar context, where they do not know the people, the place or the culture. They can also help to reduce the sense of distance between officers and the community. Public trust in the police can go a long way toward reducing crime.

Policy decisions made by law enforcement affect officers' daily contacts with the public, and these

contacts, driven by policy decisions, can be interpreted in various ways. In regard to drug policy, for example, a decision made to focus police attention on street-corner drug use and sales could be viewed by a community as support in combating a neighborhood problem, or as a hostile move aimed at removing residents from the community and putting them in prison. Likewise, police might view the community in various ways as well. The best check against ill-formed policy and practice is for police

officials to develop and review strategies with public involvement in the process.

Police abuse 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 that the race and ethnicity of

BEST PRACTICES: LAW ENFORCEMENT

AGENCY: New York City Police Department;
South Bronx Precincts

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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 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 otherwise apparent 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 partially 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. Since that time, the number of civilian complaints against the police has risen dramatically. 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 in 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. A team of researchers conducted an investigation of the causes of these 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 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 established strong community relations. They ensured that department-wide training was reinforced with training within their precincts. The precinct commanders also administered departmental monitoring programs for recidivist officers with zeal, attaching real consequences to the receipt of civilian complaints. And finally, they paired younger officers displaying attitude problems with more experienced officers. In sum, the commanding officers in these precincts took common departmental policy and used it to further their visions of how police ought to interact with the public.

IMPACT: Like the rest of New York City, the 42nd and 44th precincts showed reductions in homicides and in total index crimes between 1993 and 1998, but unlike the city as a whole, neither precinct had a substantial increase in civilian complaints in 1994 and 1995, and both precincts exhibited large crime declines in 1997 and 1998.

MATERIALS AVAILABLE: Davis, R. C., Mateu-Gelabert, P., and Miller, J. (2005). Can Effective Policing Also Be Respectful? Two Examples in the South Bronx. *Police Quarterly* (8) 2: 229-247.

all persons stopped by the police be recorded, along with other information that is routinely collected. These data will help to determine whether, where, and when practices are disparate and point to areas for improvement.

Leadership and supervision are key elements of reducing racial disparity in law enforcement, including second-tier supervision of street officer performance. The line supervisor's role is crucial as guide and coach and supervisors need to be prepared and trained for their role. When executive and managerial staff prioritize the importance of reducing unwarranted racial disparity, this translates to buy-in of the issue among line staff.

Police agencies can introduce early, data-driven warning systems in which a predetermined number of or type of complaints of alleged misconduct would trigger an internal investigation. Collection and review of aggregated department statistics can lead to individual- and unit-level accountability. Indeed, accountability systems for police managers have been receiving a great deal of attention, driven by programs like New York's COMPSTAT, a computer modeling system which combines electronic maps with police records. Such systems should be required to track patterns of racial disparity and civilian complaints as well.

Pretrial

Research and Assessment of Disparity

- Practitioners in criminal justice working at the pretrial stage can undertake or support a research process similar to that described earlier in this manual to determine if disparity is present. Within the pretrial stage, there are several places where individuals might be treated differently based on race. For instance, individuals who have been arrested and charged with a crime might be:
 - Denied release on recognizance or supervised release;
 - Subjected to bail amounts which they cannot post;
 - Denied admission to diversion programs; or
 - Denied consideration for deferred prosecution, or alternative sanction programs at this point in the process.
- Racial disparities may emerge at one or all of these points; a data-driven approach will inform whether and to what extent this is the case. If disparities are evident, one can initiate a process with front-end decision makers (i.e., police, pretrial, prosecution, defense, and court officials to examine policies, guidelines, and practices to determine what contribution they make to disparity at this phase of the system; this will inform which corrective measures to implement. When reviewing these policies, guidelines, and practices, it is important to include representatives from the area affected by these policies and practices, especially residents from minority communities.

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 arraignment.
- Reach agreement within the jurisdiction about the importance of early release decisions because of their potential impact on the outcome of a case. At these early points in the system significant 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 outside factors including race, ethnicity, gender or class.
- Require training on race-sensitive pretrial decision-making for all criminal justice officials involved in making or influencing pretrial decisions, including judges, prosecutors, defense counsel, pretrial program directors, and other service providers, as appropriate.
- Develop strong positive working relationships with other criminal justice agencies and personnel so that communication across systems is fluid. In addition, include members of the community and advocacy groups in collaborative work on public education about the early release decision and issues related to early release.
- Ensure that 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 outcomes, including diversion, deferred prosecution, or alternative sanctions following a negotiated plea.
- Assure the participation of community resources such as faith-based organizations and social service programs in developing defendant services that can be used as conditions of release, case diversion, or sentencing alternatives.

Development and Implementation of Race-Sensitive Policies and Practices

- Develop and adhere to exemplary protocols for all pretrial decisions using the standards developed by the National Association of Pretrial Services Agencies (NAPSA) that will reduce the potential for disparity.⁵⁵
- Review objective tools (e.g., risk assessment instruments) and standard operating procedures to be sure that they are not inadvertently biased, and make changes where necessary.

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 pretrial release decision is one of the earliest points in the system where significant 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 two goals of the bail decision are to (1) ensure that the defendant makes all court appearances, and (2) 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 nor should it be used to hold a defendant who is a minimal risk for offending or failing to appear in court. These due process

BEST PRACTICES: PRETRIAL

AGENCY: Minnesota Fourth Judicial District

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INITIATIVE: Pretrial Risk Scale Validation Study

GOAL: To determine whether the Hennepin County pretrial risk assessment scale reliably predicts the risks of pretrial offending and failure to appear in court, and to learn whether racial bias is associated with any of the scale indicators.

BEST PRACTICE: Review risk assessment instruments to ensure that they are objective decision-making tools.

DESCRIPTION: A pretrial risk scale was used by the Community Corrections Pretrial Unit in 2006 to conduct “full bail evaluations” to inform pretrial release decisions in the Fourth Judicial District. Those who score at the lowest risk could be released without any special requirements. Those defendants who were at higher risk would be released with certain conditions imposed upon their behavior (conditional release) while those at the highest risk would be released only if they posted a certain amount of bail. Besides calculating the pretrial scale score, a full bail evaluation additionally included a criminal history review, an interview with the defendant, and collateral phone calls to verify the information that had been given during the interview.

The risk assessment tool was first designed in 1992 and had not been validated for accuracy in predicting the risk that defendants would offend or fail to appear in court if granted pretrial release. In 2006, using rigorous statistical tests to validate the scale, researchers found that three of the nine indicators were correlated with race, but were not significant predictors of pretrial offending or failure to appear in court. These three factors were: whether a weapon was used during commission of the main offense, whether the defendant lived alone, and whether the defendant was under the age of 21 when booked for the main charge. Two of the three indicators in question had been added to the scale for policy-based reasons in 1992, rather than because the original statistical research had found them to be predictive of pretrial failure. A fourth indicator, being a resident of Minnesota for three months or fewer, was found to be unrelated to pretrial failure.

IMPACT: The recommendation to eliminate the three indicators that correlated with race but not with risk, along with the fourth indicator, was adopted by the court and the new scale has been used since December 2007.

MATERIALS AVAILABLE: Fourth Judicial District of Minnesota Research Division (2006). *Fourth Judicial District Pretrial Evaluation: Scale Validation Study*. Minneapolis: Fourth Judicial District of Minnesota. Available online:

http://www.mncourts.gov/documents/4/Public/Research/PreTrial_Scale_Validation.doc

BEST PRACTICE: JUVENILE DETENTION

AGENCY: Multnomah County Department of Community Justice
Juvenile Services Division

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INITIATIVE: Detention Reform Initiative

GOAL: To promote fair and equitable decisions about police custody and detention and to reduce minority overrepresentation in Multnomah County's secure custody juvenile facility.

BEST PRACTICE: Institute well-researched, structured, neutral and objective assessments for risk management and provide structured guidelines for handling probation violations.

DESCRIPTION: In 1994, juvenile justice reform advocates in Portland formed a detention reform committee with the goal of designing a new public safety model that could decrease juvenile crime while reducing reliance on detention by using confinement for high-risk youths, not high-need youths. Research determined that both police referrals and detention processing were major factors contributing to overrepresentation of African American and Latino youths. Involvement with the Annie E. Casey Juvenile Detention Alternative Initiative (JDAI) helped to foster many strategic reforms since 1994, earning Multnomah County a designation as a JDAI Model Site.

New contracts were developed with service providers located in the communities of color where many of the detained youth lived. At the same time, a risk assessment instrument was developed to provide an objective basis for detention decisions. Because reducing racial disparity was an explicit goal, each individual element of the instrument was evaluated through a "lens of race"—replacing such potentially biased criteria as "good family structure" with a determination of "whether there is an adult willing to be responsible for assuring the youth's appearance in court"—and dropping references to "gang affiliation," a designation that is sometimes attributed to minority youths simply on the basis of where they live.

A new detention intake team was created to review the potential of each youth in detention for diversion to community-based alternatives on a daily basis. A "pretrial placement coordinator" provides internal accountability by performing daily quality control checks to identify operational problems such as excessive overrides of the risk instrument, which were swiftly addressed. A "sanctions grid" was

devised to mandate use of alternatives to detention before a youth can be placed in custody for violation of probation. Information about JDAI's goals and procedures were incorporated in the training of community police officers.

In Multnomah County in 2007, African American youth were three times more likely than whites to be referred to the juvenile justice system by police, and they are more likely to be detained, less likely to be diverted, and more likely to be committed to a state youth correctional facility after adjudication. In October 2007 a newly-validated risk assessment instrument was introduced, both to improve overall recidivism and appearance rates and to correct racial/ethnic and gender disparity in detention decisions and outcomes.

IMPACT: JDAI reforms have had an impressive impact on reducing reliance on detention, including the detention of African American youth. The reforms can be attributed with helping to reduce the average daily detention population from 92 in 1993 to just 19 in 2007. Since implementation of the validated risk assessment instrument, the new-offense rate for African American youths has dropped from 23 to 13 percent; the African American release rate at initial screening has risen from 44 to 51 percent; and their release rate at preliminary hearings has risen from 24 to 33 percent. The Multnomah County Department of Community Justice releases an annual report on their progress on reducing disproportionate minority contact.

MATERIALS AVAILABLE: Rhyne, C., & Pascual, K. (2008). *Juvenile Minority Overrepresentation in Multnomah County's Department of Community Justice: Calendar Year 2007, Youth Data*. This report is available online at: http://www.co.multnomah.or.us/dcj/jsd_min_overrep2008.pdf.

Documents describing the Multnomah County Detention Reform Initiative are available online at: <http://www.jdaihelpdesk.org/Pages/MultnomahCountyOR.aspx>

Additional research and evaluation reports are available online at: http://www.co.multnomah.or.us/dcj/evaluation_juvenile.shtml

measures can be understood as a priority if they are highlighted as part of a pretrial service agency’s mission statement.

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 and drug and alcohol treatment services, should be publicized so that individuals can be referred to them.

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; and the goals of pretrial release and bail.

An important first step to eliminate the unfair use of the bail system is to disassociate it from financial resources. The American Bar Association, National District Attorneys Association and the 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. Elimination of commercial bail bonding would bring about a more equitable system of pretrial release because the conditions would be unrelated to financial resources, which places many minorities at a disadvantage.

A second step is to ensure that tools used to assess risk do not discriminate against those with different races, ethnicities, or cultural backgrounds. Finally, pretrial service agencies should make an explicit effort to have a diverse workforce by recruiting minorities.

Prosecution

Research and Assessment of Disparity

- Undertake a research process similar to that described in Section III of this manual to determine if minority defendants are treated disparately at the prosecution stage. Possible points at which racial disparity might be found include:
 - Bail/release recommendation
 - Charging decisions
 - Access to diversion programs
 - Approvals for deferred prosecution
 - Plea offers and sentence requests
 - Access to alternative sanction programs.
- If disparity is evident, practitioners should initiate a review of office policies and practices to identify possible ways in which they may inadvertently produce racially disparate results, and develop appropriate corrective measures.
- Collaborate with other agencies, criminal justice practitioners, and members of the community to identify racially disparate outcomes, determine their causes, and develop appropriate corrective measures.
- Examine the role of race in capital cases. Are capital cases represented by sufficiently skilled and prepared attorneys? Is there empirical evidence that the race of victim or defendant influences the charging decisions in capital cases?
- Examine the role of race in relatively minor cases like property offenses and misdemeanors. What role does race play? Are cases represented by qualified attorneys? Are sentencing decisions influenced by race exclusive of other factors?

Collaborate to Develop Effective Strategies to Reduce Crime

- Identify neighborhoods that are associated with a large portion of the caseload, and work to funnel more resources to these areas for community-based programming, advocacy, and public education. Engage the community with practitioners

in other parts of the criminal justice system to develop effective crime-reduction strategies and support alternative pre- and post-adjudicatory programming.

- Examine the impact of harsh drug policies within specific neighborhoods. Do they have a disparate effect in neighborhoods of color? What alternative practices can address drug-related problems in a community?

Develop and Monitor Prosecutorial Guidelines

- Institute race-sensitive guidelines for charging, discovery, bail/release recommendations, plea bargaining and prosecutorial diversion. Utilize American Bar Association and National District Attorneys Association standards as a starting point.⁵⁶ Adherence to guidelines such as these can protect the discretionary power of the prosecutor's office. Complete a racial impact analysis as discussed in *Section II* so that short- and long-term effects of policies on minorities are taken into account.
- Examine how administrative practices may need to be modified to avoid or reduce disparity. For instance, staff may experience difficulties in contacting some people because they do not have telephones or do not speak English. In addition, victims and defendants may be unable to make court appearances because of inflexible work schedules.

Engage in Public Advocacy

- Take public action to oppose laws that draw more minorities into the system without a compelling public safety rationale.
- Support the development of high standards in communities for pretrial release and bail practices.
- Urge the adoption in Continuing Legal Education (CLE) programs of curricula for prosecutors on the topic of race relations, the causes of disparity, and its effects on communities and society at large.

Encourage Diversity in the Legal Profession

- Recruit attorneys in the local bar association who focus their 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 law program curricula that sensitize aspiring attorneys on the issues of race and racial disparity in the criminal justice system.

Discussion

Prosecutors generally have broad discretion—often

statutorily based—which can have a significant impact on racial disparity. This power holds the potential both for appropriate individualized decision-making and for abuse.

One of the most illustrative examples of discretion is in the area of bail recommendations; prosecutors exercise wide discretion at this decision point. The prosecutor's aims at this stage of the criminal justice process are to: (1) determine the best way to ensure that the offender returns to court; and, (2) to protect the community from offenses which the defendant may commit while on release. Bail decisions, especially in urban centers, are often treated without attention to individual case characteristics. Rather, it is frequently assumed that a

BEST PRACTICES: PROSECUTION

AGENCY: Vera Institute of Justice

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INITIATIVE: Prosecution and Racial Justice Program

GOAL: Assisting district attorneys to monitor and guard against racial bias in prosecutorial decision-making.

BEST PRACTICE: Utilization of data collection and analysis tools to track and manage prosecutorial discretion at the critical decision-making stages of case processing to determine whether any unwarranted disparities are resulting.

DESCRIPTION: Launched in 2005, the Prosecution and Racial Justice (PRJ) program is working in partnership with chief prosecutors in Milwaukee County, WI; Mecklenburg County, NC; and San Diego County, CA to develop statistical tools and analytic protocols capable of identifying patterns that suggest where race or ethnicity are inappropriately influencing prosecutors' decisions, particularly in regard to African Americans and Latinos—two groups that are disproportionately represented in jails and prisons across the nation.

Prosecutors' exercise of discretion operates with minimal external oversight, yet has more impact on case outcomes than the decisions made by any other actor in the criminal justice process. Decisions made by prosecutors about whether to charge defendants, what charges to bring

against them, whether to allow diversion to alternative programs, and what dispositions to seek in plea bargaining, as well as recommendations they make to judges about bail and use of available sentencing options, can play a key role in promoting racial fairness and justice.

PRJ helps its partners adapt their electronic case management systems to be able to track and monitor critical variables and related indicators, and to devise analytic tools and routine reports so that when racial disparities are detected, they can determine whether racial bias is a factor. Through ongoing internal monitoring of discretionary decisions at critical points, district attorneys can guard against the influence of racial bias and implement corrective policies and procedures whenever they are needed.

IMPACT: The systems development work required to introduce and implement the PRJ process can take considerable time and effort, but early results from Milwaukee show that the PRJ process can have a significant impact on racial disparity. Analyses showed that relatively junior prosecutors were filing drug paraphernalia charges (rather than declining prosecution) at a much higher rate against non-whites (in 73% of cases, compared to 59% in cases with white defendants). By stressing diversion to treatment or dismissal and requiring junior staff to consult with their supervisors prior to filing such charges, the district attorney was able to quickly eliminate the evident disparity.

MATERIALS AVAILABLE: Information on the PRJ program is available from the program director, and a description of the process is available online: www.vera.org.

predetermined bail amount should be demanded in all criminal cases; the more serious the charge, the higher the amount should be. Policies based on these assumptions invariably hurt low-income defendants.

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 bail amounts intended to detain the defendant may actually force a plea. Since race is inextricably tied to the amount one can afford to pay in bail, it is critical that both race and social class be considered in bail decisions. And, 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 and to be sure that the impact of their decision on amplifying minority overrepresentation be assessed. Thus, prosecutors should work with other professionals in the system and with community representatives to develop bail guidelines that are sensitive to this potential and are perceived as objective and just.

Policies that encourage full and early discovery for the defense are also important. These may facilitate earlier release of detainees, as well as early exploration of deferred prosecution and sentencing alternatives. Since 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

BEST PRACTICES: PROSECUTION

AGENCY: San Diego District Attorney's Office

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INITIATIVE: Challenging disproportionate representation in the jury pool

GOAL: Achieving proportional racial and ethnic representation on criminal juries.

BEST PRACTICE: Prosecutorial initiative to correct the problem of underrepresentation of people of color in construction of the pool from which juries are empanelled.

DESCRIPTION: In January 2008, after defense attorneys representing a client in a death penalty case charged that Latinos were underrepresented by 50% in the jury pool in San Diego's downtown courts, the San Diego District Attorney filed a letter with the court requesting that immediate steps be taken to cure a defect in the juror summons process. Prosecutors argued that the flawed process skewed the racial composition of the jury pool, causing fewer Latinos to be called for jury service compared to their proportion of the county population as a whole. They cited a law that prohibits summoning jurors in a way that would "knowingly cause a disparity" in the jury pool.

John Weeks, a San Diego State University professor who studied patterns in jury pool construction, found that just 9% of questionnaires completed by those responding to jury summonses at the downtown courthouse were Latino, while population statistics indicate that Latinos should have comprised 19%. San Diego's North County and South Bay judicial districts have large concentrations of jury-eligible Latino residents, but Latinos are underrepresented on downtown juries because fewer summonses are sent to these districts. San Diego's Central judicial district (where the downtown courts are located) contains 45 percent of all eligible jurors, but 70% of jurors in the downtown courts are drawn from within that district instead of drawing them proportionally from where they live across the county.

To correct the disparity, the District Attorney advocates that prospective jurors be summoned proportionally to where they live, with 45% of summonses sent to individuals living in the Central district, 26% in North County, 17% in East County and 12% in South Bay.

IMPACT: The judge denied the motion on the grounds that many substantial changes have been made to the jury system in the past two years. Even though the motion was denied, this initiative remains an important contribution to efforts in selecting demographically representative jury pools.

MATERIALS AVAILABLE: Contact Daniel Rodriguez, Deputy District Attorney, for more information.

individual cases is appropriate, the policies which shape the exercise of that discretion should be open to public review and comment. Toward that end, some prosecution offices create meaningful liaisons with local community representatives to enhance their understanding of the community's concerns and ways in which the prosecution office can address them, and to enhance the public understanding of how their offices operate. This facet of prosecution is not widely pursued, but could expand the prosecutor's knowledge and recommendation of local programs as an alternative to incarceration.

If prosecutors in leadership positions advocate for improvements to the way that prosecutorial discretion is used, this may forestall legislative initiatives such as the institution of prosecutorial guidelines which curb discretion. Since this could conflict with prosecutors' practical needs, they are encouraged to call for research that studies the impact of prosecutorial discretion, particularly in the area of racial disparity. In some jurisdictions, agencies such as the judiciary track information relative to the use of discretion by the prosecutor's office. This practice should be encouraged by prosecutors and should be jointly developed in a collaborative spirit.

To monitor the exercise of prosecutorial discretion, prosecutors should collect and publicly report race data on bail/release requests, charging, and plea bargaining so that the process is transparent. They can also document the rationale for staff decisions regarding charging for mandatory sentencing such as how they determine whether to seek the full punishment of the law or to reduce or withdraw charges.

The charging decision represents one of the most critical stages of the criminal justice system, with considerable potential for reducing or expanding racial disparity. Standards that consider the interest of victims in prosecution as a charging criterion may work against the interests of minority victims. For instance, if victims do not have a home telephone or do not have a work schedule that permits time off for meetings with prosecutors or court appearances, they may appear to some prosecutors to be less interested in the case. Standards that consider 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 may want to collaborate with other criminal justice actors to discuss racial disparity issues through periodic meetings regarding system fairness and effectiveness and use these meetings as a forum to discuss internal reforms as well as to motivate other agencies to take similar steps. These meetings would include public defenders, the private bar, prosecutorial staff (including special prosecution units), law enforcement, judges, and victims.

Public education efforts are required because, as elected officials, prosecutors must make their policies and practices understandable to the general public. Transparency is a key feature of good government, and prosecutors should seek opportunities to meet with citizens to talk about costs, alternatives, programming successes, and the rationale for addressing racial disparity.

Defense

Research and Assessment of Disparity

- 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 policies, practices, and allocation of resources for the defense may contribute to that disparity, and advocate for appropriate corrective measures.

Effective Representation of Defendants

In order to provide effective representation, the defense bar should prioritize the following:

- Advocate for sufficient resources to secure effective client representation as soon as possible after arrest.
- Advocate for access and resources for appropriate diagnostic and assessment services at an early stage of representation.
- Advocate for full discovery as soon as possible after arrest as evidence is produced by the prosecution, in order to prepare an effective defense, including an individualized sentencing proposal in felony cases.
- Build a working knowledge of various cultural issues that often impede fair court processing. Encourage defense attorneys to create teams of family, community and other professionals acquainted with pertinent cultural norms to increase understanding of dynamics of a particular case.
- Develop directories of area service and community organizations for use by local attorneys.
- Provide opportunities for defense counsel training to improve competency for defense of youthful offenders.
- Examine the role of race in capital cases from the perspective of both the accused and defense counsel; are capital cases represented by well-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 are justified only in terms of the defendant's risk of flight, or risk to public safety upon release, or both.

Advocate for Sentencing Reforms that will Reduce Racial Disparities

- Defense attorneys should ask sentencing advocates to develop sentencing proposals for the court in felony cases and jointly challenge unwarranted racial disparities at sentencing.
- Public defense offices should establish effective working relationships with area schools, faith-based organizations, and social service agencies in which a significant portion of criminal defendants reside in order to enhance their ability to draft sentencing proposals for their use by the court, and to monitor their 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 race-sensitive 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 overrepresentation at all stages of the criminal justice process.

- Take an active role in the recruitment and professional advancement of attorneys in the local bar association who will focus attention on issues of reducing racial disparity in the criminal justice system.
- Work with area law schools to determine the status of minority representation among the 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 area law schools the opportunity for practicum involving hands-on courtroom and client based work to offer more experience to the school program.

BEST PRACTICES: DEFENSE

AGENCY: Metropolitan Public Defender Services

CONTACT: Chris O'Conner, Staff Attorney

ADDRESS: Metropolitan Public Defender
Portland Office
600 S.W. 5th Avenue, Suite 500
Portland, OR 97204

PHONE: (503) 225-9100

INITIATIVE: Reducing racial bias in policing

GOAL: Elimination of "Drug-Free Exclusion Zones" in Portland, OR

BEST PRACTICE: Defense counsel leadership and advocacy defeated a 15-year-old city ordinance that excluded people from certain areas of the city and resulted in a disparate impact on African Americans.

DESCRIPTION: A "Drug Free Exclusion Zones" ordinance, enacted by the city commission in 1992 with support from the Portland Business Alliance, allowed designation of certain areas in Portland where, when police arrested a person for certain qualifying drug crimes, they could then exclude them from "any public right of way and park" within the zone for 90 days without a trial or conviction. If those arrested were later convicted of the drug offense for which they were initially excluded, they were excluded for a full year. If acquitted, they remained excluded for 90 days. Unless they were granted a specific variance from the exclusion order by police, they were subject to prosecution for one of two possible misdemeanor charges if they were caught reentering the zone.

Defenders at the Metropolitan Public Defender Services brought repeated legal challenges to the ordinance, charging that it infringed on a broad range of fundamental constitutional rights and that its design as well as its manner of enforcement by police resulted in racial disparity. While upholding the law on narrow grounds, one judge wrote, "In practice, then, the Ordinance amounts to an elaborate scheme to accomplish detention, arrest, exclusion, and search of its targets while avoiding judicial oversight and the inconvenience

of older restrictions on search and seizure occasioned by exclusionary rules first fashioned to protect the liberties of citizens" (*State v. Burrage, C. 04-05-45747 [2005]*). While not eliminated through litigation, the ordinance was repeatedly revised in response to several court opinions which found some of its provisions invalid in various respects. Changes included authorizing of certain "automatic" and "plausible need" variances in response to adverse rulings.

Defenders used available police statistics to keep the issue in the public eye and they found that the issue of racial impact was of great interest to residents who attended neighborhood meetings and city-wide forums. When the ordinance was due for renewal by the City Commission in 2007, Mayor Tom Potter commissioned a study to examine whether charges of racial disparity were supported by police data. Researchers found that while African Americans comprised just 8% of Portland residents, 53% of the people arrested for an excludable crime in Portland's three drug-free exclusion zones during an 11-month period in 2006 and 2007 were African American. Police wrote exclusion notices for roughly half of the whites and Latinos they arrested, but for more than two-thirds of African Americans.

For drug arrests in the exclusion zones there was an apparent disparity related to the type of drug, with nearly 70% of those arrested for cocaine receiving an exclusion notice, while 30% of those arrested for methamphetamine received a notice. Of the exclusion-eligible arrests for cocaine, 91% involved African Americans, while whites accounted for 82% of those arrested for methamphetamine. On the basis of the findings that enforcement practices were producing sharp racial disparities, the mayor decided to allow the ordinance to sunset.

IMPACT: The campaign resulted in a sunset of the law.

MATERIALS AVAILABLE: Campbell DeLong Resources, Inc. (2007). *An Analysis of Data Relating to the City of Portland's Drug Free Zone Ordinance: A Summary Report*. Portland: Campbell DeLong Resources, Inc. Report available online: <http://www.portlandonline.com/mayor/index.cfm?c=46250&a=169784>

- Urge the adoption in Continuing Legal 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 for minority defendants. Changes in the distribution of resources are often legislatively driven and depend on local circumstances; these vary widely from state to state. Two areas where inequitable resources for the defense can lead to disparate treatment of minority de-

fendants are the timing of the assignment of counsel and the ability of the defense counsel to advocate for alternatives to incarceration at sentencing.

Funding limitations 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 charging decision, the plea offer, the plea itself, and the bail/release decision.

BEST PRACTICES: DEFENSE

AGENCY: Gloucester County Office of the Public Defender

CONTACT: Jeffrey Wintner, Public Defender

ADDRESS: 65 Newton Avenue
Woodbury, NJ 08096

PHONE: (856) 853-4188

INITIATIVE: Reducing Racial Profiling in Police Stops

GOAL: Eliminate the practice of stopping persons of color in routine traffic stops at the south end of the New Jersey Turnpike which resulted in racial discrimination.

BEST PRACTICE: Defense counsel leadership to provide study of racial profiling and legal advocacy as a means of reducing the disparate treatment of persons of color.

DESCRIPTION: In early 1994, five attorneys from the Gloucester County, N.J. Public Defender Office filed suppression motions in 19 separate cases in which evidence had been obtained following traffic stops of African American motorists. The defenders 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*, 734 A. 2d 350 (N.J. Super Ct. Law. Div. 1996)). In support of their discovery motions, the defenders 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*, 247 N.J. Super 21 [App. Div. 1991]). The court

ordered disclosure of police records showing who was being stopped, and for what reason, on a stretch of Interstate 95.

With statistical help from experts at two nearby 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 defenders 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 *McCleskey v. Kemp*, 481 U.S. 279 [1987]). 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*, 478 U.S. 385 [1986]). Nor will mere denials or reliance on the good faith of the officers suffice (citing *Castaneda v. Partida*, 430 U.S. 482 [1977]). The defendant’s charges were dropped.

IMPACT: In response to the attention drawn to this issue, President Clinton signed an executive order 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 followed a U.S. Department of Justice initiative to gather opinions from 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: Contact Jeffrey Wintner, Public Defender, for more information.

These decisions, in turn, greatly influence outcomes at each subsequent stage of the system. 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 through ongoing training and education, with the goals being to educate, analyze and improve the ways defense attorneys understand and handle racial disparity.

Other issues which the bar and criminal defense attorney associations can 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: Kentucky Department of Public Advocacy

CONTACT: Dawn Jenkins, MSW

ADDRESS: Dept. of Public Advocacy
100 Fair Oaks Lane, Suite 302
Frankfort, KY 40601

PHONE: (502) 564-8006

INITIATIVE: Litigating Race Manual Education Project

GOAL: To improve the operations of the criminal justice system where the issues of race and ethnicity are concerned.

BEST PRACTICE: Training defense counsel to 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.

DESCRIPTION: Kentucky's Department of Public Advocacy (DPA), the statewide public defender system, has developed a program for educating the defense bar on issues of racial injustice and disproportionate minority confinement in Kentucky as a step toward its eradication. Minority overrepresentation in the criminal justice system is a well-documented problem in Kentucky and in other states, particularly among youth. The Kentucky Chief Justice has urged members of the bar to end any acts of racial discrimination in the courts.

DPA's mission is to improve the criminal justice system through legal action—with a focus on practices where issues of race and ethnicity are concerned. Some improvements have come about as a result of legal challenges, such as the landmark case, *Batson v. Kentucky*, 476 U.S. 79 1986, in which the U.S. Supreme Court ruled that a prosecutor's use of peremptory challenges may not be used

to exclude jurors based solely on their race. Other improvements have been accomplished through legislative advocacy resulting in enactment of laws such as the Kentucky Racial Justice Act, which allows a capital defendant to use statistical evidence to argue that race influenced the decision to seek the death penalty in the case. And finally, public advocacy led to Governor Ernie Fletcher's December 2007 commutation of an African American death row inmate's sentence after it was determined that his defense attorney had not provided adequate representation at trial.

In 2008, DPA embarked on an education project in collaboration with the Kentucky Bar Foundation and local bar associations to educate the defense bar on how to better litigate issues of race, ethnicity and immigration at trial. Appellate and trial attorneys produced a document entitled "Litigating Race Manual," which provides defense lawyers with tools to identify issues of racial bias or racial disparity at each stage of the criminal process.

The manual addresses issues of racial profiling, immigration status and deportation, transfer hearings for juveniles, pretrial release, and the jury issues addressed in *Batson*. DPA held six training sessions for agency lawyers across the state, and provided trainings for other defense lawyers through local bar associations, and through several regional education summits convened to discuss race and ethnicity in the criminal justice process.

IMPACT: DPA leadership will monitor the impact of the training sessions and litigation manual to assess their usefulness in addressing unwarranted racial disparity.

MATERIALS AVAILABLE: Kentucky Department of Public Advocacy (2008). *Justice for All: Litigating Race Issues to Protect Equal Justice in Kentucky*. Frankfort: Kentucky Department of Public Advocacy.

BEST PRACTICES: DEFENSE

AGENCY: The Defender Association

CONTACT: Lisa Daugaard, Deputy Director

ADDRESS: 810 Third Avenue, Suite 800
Seattle, WA 98104

PHONE: (206) 447-3900

INITIATIVE: Racial Disparity Project

GOAL: Reducing racial disparity in the criminal justice system in three areas: 1) racial disparity in vehicular impounds as a result of convictions for Driving While License Suspended, 2) racial profiling in traffic stops and, 3) racial disparity in enforcement of drug laws.

BEST PRACTICE: Defense counsel leadership to spur change, resulting in development of specific initiatives to reduce disparate treatment.

DESCRIPTION: A 1995 study found that race was 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.”⁵⁷ 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.”

In 1999, the Defender Association in Seattle received federal funding to establish the Racial Disparity Project, an effort designed to identify practices that could be changed administratively through education and training programs, and to use motion practices and appellate efforts to address systemic problems. Three areas of disparity have been targeted:

(1) Impoundment of vehicles driven by persons with suspended licenses: The licenses of 89% of those whose cars were impounded under Seattle’s “Project Impound” had been suspended for non-payment of fines, mostly for traffic and equipment violations. The practice fell most harshly on low-income people of color, with 42% of the cars impounded driven by nonwhites, while they represented only 25% of the city population. Public defenders addressed the issue in several ways: appealing the impounds, questioning hearing notice procedures that did not follow the ordinance’s requirements, recommending alternative approaches to judges, working with community groups to encourage amending the law, educating public officials, and engaging the media in a debate on the merits—and racially disparate results—of the law. Increased use of time payment plans helped to reduce the

problem, and in 2002 the Seattle City Council established a car recovery legal clinic, using area university law students to assist people to regain possession of their cars.

(2) Traffic stops: Defenders targeted the issue of racial profiling by advocating that data collection efforts record all stops, noting the age, gender and race of each suspect, the reason for the stop, and the subsequent action taken. When evidence surfaced that King County Sheriff’s deputies might have been encouraged to profile by race, defenders worked to educate the press about similar efforts across the country, most notably Gloucester County, N.J., and used the media to publicly challenge the practice through writing editorials.

(3) Drug enforcement: In April 2001, the Defender Association held a joint press conference with the Seattle Police Department to reveal the findings of a study of police enforcement of drug laws. A team of researchers from Harvard’s Kennedy School of Government analyzed patterns of drug use, drug markets and drug law enforcement in Seattle. They found that a concentration of buy-and-bust tactics in visible “open air” drug markets in certain downtown locations resulted in disproportionate numbers of arrests of minority people. While just 8% of Seattle residents are African American and their proportion among drug users is even lower (6-7%), they comprised 57% of those arrested for drug crimes, and 79% of all buy/bust arrests. The head of the Seattle-King County Public Defender Association and the Seattle Chief of Police issued a joint call for more resources for treatment and for the expanded use of drug courts, while defenders moved to consolidate a score of buy/bust cases in a legal challenge to the patterns of enforcement.

A 2004 study by University of Washington professor Katherine Beckett again compared the racial and ethnic composition of those who sold drugs with the racial and ethnic composition of those arrested for this offense. Beckett found that several police practices explain racial disparity in drug arrests, including a law enforcement focus on crack offenders, and the priority placed on outdoor drug venues. She documented that these practices were not determined by race-neutral factors such as crime rates or community complaints.

Defenders organized a coalition of community advocates to support development of “Clean Dreams,” a street-level outreach program in the Rainier Beach neighborhood to prevent arrests by offering people who sell drugs immediate access to resources they can use to leave the streets and change their lives. Established in 2006, Clean Dreams offers case management and services such as housing assistance,

substance abuse treatment, education, job training and placement, licensing fees, childcare, and clothing, to help people transition to a stable, law-abiding life.

IMPACT: An evaluation of the Racial Disparity Project conducted by the University of Minnesota Institute on Race and Poverty concluded that the project enables defenders to broaden their advocacy “to encompass not only representation of individual clients, but also efforts to change the system for the benefit of disadvantaged communities, and particularly communities of color.”

MATERIALS AVAILABLE: Beckett, K. (2004). *Race and Drug Law Enforcement in Seattle*. Seattle, WA: University of Washington. Report available online: www.soc.washington.edu/users/kbeckett/Enforcement.pdf.

Klement, T., & Siggins, E. (2001). *A Window of Opportunity: Addressing the Complexities of the Relationship between Drug Enforcement and Racial Disparity in Seattle*. Cambridge, MA: Kennedy School of Government, Harvard University. Report available online: www.hks.harvard.edu/criminaljustice/pic/siggins_klement.pdf.

The Defender Association website, www.defender.org provides information on various issues and initiatives.

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 the following points:
 - Arrest
 - Bail/release decision
 - The assignment of defense attorneys
 - Diversion decisions
 - The plea negotiation process
 - Management of the court docket
 - Sentencing

It is appropriate and desirable for judges to lead discussions with representatives of the other stages in the criminal justice system, and among representatives from minority communities, to identify factors that may contribute to disparity, and to develop and implement measures to correct any racial disparity that is observed.

Expand the Range of Available Bail and Sentencing Options

- Institute trainings for judges on bail and sentencing decisions that emphasize the legal framework for judicial discretion and provide specific knowledge to improve pre-sentence investigation approaches by the defense, probation or some other agency, available alternatives to incarceration and eligibility requirements, and enrollment procedures.
- Work with other criminal justice officials and representatives from minority communities in designing and implementing useful and effective pretrial release and post-adjudication sanction programs in order to have more options available for judges.
- Work with local criminal justice agencies and elected officials to consider ways 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 without access to these resources

- Stay informed of research literature that examines 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 the necessary services to avoid continued legal involvement. Request detailed sentencing plans and proposals for alternatives to incarceration from defense counsel.
- At sentencing, examine the role that the defendant's race may have played at earlier stages of the criminal justice system (i.e., arrest, charging, and plea decisions). Take any such unwarranted disparities into account in reaching a sentencing decision.
- Articulate the court's expectations for effective assistance of counsel for all defendants and communicate these to practicing defense attorneys.

Promote Leadership Development

- Judges can influence decisions about the professional advancement of persons of color and leaders on racial disparity issues throughout the court's administrative structure.
- Encourage the local bench to participate in national judicial initiatives which are promising strategies to reduce racial disparities.

Educate the Public

- Judicial officials can encourage the media to examine issues of racial disparity and the potential and planning for reforms.
- Examine the important role of continuing education for the judiciary and determine opportunities

for cultural competency training. For example, a session might focus on the economic realities of offenders who are facing bail requirements and how they affect persons of color.

Discussion

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 the 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 an attorney. The trial court has the responsibility to maintain the dig-

BEST PRACTICES: JUDICIARY

AGENCY: Dorchester Division of the Boston Municipal Court Department

CONTACT: Deborah A. Ramirez, Professor of Law, Northeastern University; Executive Director, Partnering for Prevention

ADDRESS: Northeastern University School of Law
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Boston, MA 02115

PHONE: (617) 373-4629

INITIATIVE: Northeastern University study of the enforcement of the Massachusetts “school-zone” drug law in Dorchester, MA

GOAL: To examine the role that racially biased decision-making at the arrest, charging, and plea decision stages of the criminal justice system may play in relationship to sentencing.

BEST PRACTICE: Judicial leadership in encouraging a research process to determine if minority defendants are treated disparately at arrest, at charging, and in the plea bargaining process, and to take a lead in discussions with representatives of the other system components to develop and implement measures to correct disparity.

DESCRIPTION: A 1989 Massachusetts statute established a 1,000-foot penalty enhancement zone around schools and a 100-foot penalty enhancement zone around parks and playgrounds. Defendants convicted of distributing or possessing drugs with an intent to distribute in a drug-free zone face a two-year mandatory minimum term to be served on top of any penalty imposed for the underlying offense. Massachusetts prosecutors, however, often drop the drug-free zone enhancement in exchange for a guilty plea. (The enhancement does not apply to simple drug possession charges.)

Research on the impact of the Massachusetts school zone law was conducted by a university research team at the request of Judge Syd-

ney Hanlon, an ex-federal prosecutor who presides in the Dorchester District Court in Boston. Judge Hanlon was concerned that African American and Hispanic defendants in her court seemed much more likely to be charged with a drug-free zone offense and faced the two-year mandatory prison sentence than were whites.

Researchers examined police records and found that while roughly 80% of all drug arrests took place within a school zone, only 15% of whites were charged with an eligible offense (distribution or possession with intent) compared to 52% of nonwhite defendants. They found many instances of what appeared to be disparate treatment. For example, two-thirds of nonwhites described as the driver of a car involved in a drug transaction were charged with distribution, while three-quarters of whites described as drivers were charged with simple possession. And nonwhites identified as carriers were more than twice as likely to be charged with a school-zone eligible offense. For those arrested with less than 1/8th of a gram of cocaine, the likelihood of being charged with delivery or possession with intent was nearly four times as great for nonwhites as for whites. Defendants without a prior record were four times more likely to be charged with eligible offenses if they were nonwhite. When researchers interviewed police officers about their charging practices, they were told repeatedly, “it has to do with whether it’s a good kid or a bad kid.”⁶⁵

Judge Hanlon shared the research findings with Boston’s police commissioner and the Suffolk County District Attorney’s Office. The Northeastern University research team decided that rather than publicly releasing the report, they would meet with police officials and prosecutors quietly over several months to discuss their findings and work with them to institute change.

IMPACT: Both police and prosecutors developed guidelines for fairer handling of school zone cases.

MATERIALS AVAILABLE: Keough, R. (2000). *The Color of Justice. Commonwealth Magazine, 5(3).*

nity and propriety of all proceedings. A trial judge should correct misbehavior or disruption by an attorney, disciplining the attorney if necessary.⁵⁸

The court's authority extends to defense attorneys who use racist or other derogatory language or display such tendencies during their examination of a witness or during oral argument. When attorneys fail to adapt their behavior to the reasonable expectations of the court, they should be held in contempt and otherwise sanctioned. This authority extends to attorneys who take advantage of or exploit a defendant's race before a jury.⁵⁹

Judges have a particular obligation to be attentive to counsel's conduct during jury selection. The court should permit the jury selection process to be adequately thorough so as to disclose grounds for challenges for cause and to facilitate the informed exercise of each side's peremptory challenges.⁶⁰ But the 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.⁶¹

The judiciary has other means of strengthening its own constitutional commitment to reducing racial disparity. In most states, the highest court develops rules to help guide and control judicial conduct in the lower courts.⁶² Utilizing studies or research data demonstrating racial disparity at one or more stages of the criminal court process, judicial agencies (often the state's highest court) should adopt rules which will achieve judicial and law enforcement objectives in criminal procedures while reducing disparity in application and outcomes.

Continuing education for the judiciary is a critical element toward eliminating racial disparities. Vigorous training programs in cultural competency should be established by organizations responsible for judicial training.

Relationships between judges and defendants can make a difference as well. 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 stimulate public discussions among court officials and the public based on the research findings on race and court processing. For example, following 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,⁶³ a Boston 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 were charged.

A case in 1998 demonstrates this point as well. When an African American man came before Judge Nancy Gertner convicted of "felon in possession of a firearm," she gave him a sentence considerably under the recommended sentencing guidelines. This decision was made after reviewing the offender's prior offenses and noticing that they were largely nonviolent traffic offenses. Upon careful review of these priors, she determined that as a black man he was more likely to be stopped by police than a white individual in his position who engaged in the same behaviors would be.⁶⁴

Judges can also initiate studies of their jurisdiction's pretrial release and sentencing practices and respond to concerns about race 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 all defendants.

BEST PRACTICES: JUVENILE COURT

AGENCY: Pima County Juvenile Court

CONTACT: Marcia Rincón-Gallardo, DMC/JDAI Coordinator

ADDRESS: 2225 East Ajo Way
Tucson, AZ 85713

PHONE: (520) 740-4542

CONTACT: James Bell, Director, W. Haywood Burns Institute

ADDRESS: 180 Howard Street
San Francisco, CA 94105

PHONE: (415) 321-4100

INITIATIVE: Disproportionate Minority Contact/Juvenile
Detention Alternative Initiatives

GOAL: To address the disproportionate involvement of minority youths in the juvenile justice system and eliminate the inappropriate use of juvenile detention through community-based alternatives.

BEST PRACTICE: Collaborative action between system actors and community advocates to identify and track racial and ethnic disparities at every decision point in the system, create solutions, and monitor progress toward reducing disparity.

DESCRIPTION: African American youth comprise three percent of the overall population in Pima County, but they comprise 10% of detained youth. The Pima County Juvenile Court has engaged both the Annie E. Casey Foundation and the W. Haywood Burns Institute for assistance in reducing the detention population and in seeking solutions to the problem of racial disparity in the juvenile justice system.

A Disproportionate Minority Contact (DMC) executive committee formed in 2004 to involve juvenile court officials with other key system actors and community stakeholders. Members of the committee include law enforcement officers, prosecutors and defenders, the county board of supervisors, representatives from the child protection agency and local school districts, and leaders of local civil rights groups (e.g., NAACP, Tucson Urban League, Chicanos for La Causa, and The Indian Center).

The committee's work includes collecting and analyzing data. Specifically, members developed a profile of the detention population, and created geocoded maps to identify specific communities from which a high proportion of minority youth are referred. Using additional data from law enforcement agencies and behavioral health systems, the committee developed community asset maps to identify a matrix of available program services for at-risk youth in those areas. They created partnerships with local community residents and neighborhood organizations to design and implement specific strategies for avoiding arrests and reducing reliance on detention through

the appropriate use of community-based services and through local supervision. The committee meets monthly to review the most recent data, develop strategies, and review progress.

The committee oversaw the revision of a risk assessment tool and currently monitors its use through reviewing quarterly reports they receive. These reports include detention statistics disaggregated by gender, race, and ethnicity. The reports also provide an analysis of the use of overrides by staff. Monthly statistical reports keep the executive committee informed about referrals to detention, detention population levels, and disposition outcomes (i.e., diversion, treatment, and commitments to state juvenile corrections facilities), and highlight areas where remedial action is needed to correct racial and ethnic disparity.

Finally, the Tucson Urban League developed an evening reporting center that provides tutoring, job skills training and recreational opportunities for four hours each weeknight as an alternative to detention for youth who have violated the terms of their sentence to intensive supervision probation (ISP). The ultimate goal of the committee is to reduce racial disparity through the provision of effective services in the communities where they are most needed. Three Tucson neighborhoods have been targeted because they send the highest number of youth to detention. An evening support center is now being developed in one of the target neighborhoods for youth sentenced to traditional probation.

The Tucson Police Department engaged the services of the Burns Institute to assist with a self-assessment that will provide information about factors that affect decision making at the point of arrest.

IMPACT: The overall number of commitments to state confinement facilities for Tucson youth reduced 64% during the first three years of this initiative. Since 2004, the number of juvenile detainees has fallen from a high of 173 to fewer than 80. While the actual percentages of youth of color have increased and remained persistent, the collaborative notes that the overall drop in detention means that many African American youth who would otherwise have been detained have been now diverted from detention.

MATERIALS AVAILABLE: Pima County Juvenile Court Center (July 2007). *Pima County Juvenile Court DMC/JDAI Annual Report*. Pima County: Pima County Juvenile Court Center DMC/JDAI Initiative. Report available online: <http://www.pjcc.co.pima.az.us/jdai/reports/2007-2008AnnualReportv5.pdf>

Information about the Disproportionate Minority Contact/Juvenile Detention Alternative Initiative is available online: <http://www.pjcc.pima.gov/jdai/jdai.htm>.

Probation

Research and Assessment on Disparity

- With the assistance of other criminal justice personnel and representatives of minority communities, probation officials 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 noncompliant probationers
 - Initiating probation violation proceedings
- Factors that have a negative impact on minority defendants should be identified and modified to eliminate their contribution to racial disparity.
- Probation officials should analyze individual presentence reports to determine any patterns in style or language that suggest bias. If bias is present, officials should make necessary adjustments to eliminate bias.

Reorient Probation Services toward a Community-Based Model

- In order to reduce the social and cultural distance between probation personnel and those whom they investigate and supervise, 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 in minority neighborhoods to assist them in providing services to probationers, connecting local agencies with the courts to establish working

relationships, and developing a range of graduated sanctions for noncompliant probationers.

Develop a Range of Sanctions for Non-Compliance

- Assess the availability of required probation programming (e.g., employment and substance abuse treatment) in minority areas. Where services are lacking, focus probation resources to respond accordingly.
- Examine and improve policies and processes for handling the probation decision so that it is based on objective assessments of risk. For probation violations, be sure that decisions are driven by structured guidelines which standardize responses to violations.

Develop and Utilize Objective Risk Management Assessments

- Institute evidence-based, objective risk assessments for probation officials to use to determine appropriate levels of supervision. Provide training on use of the assessments and monitor their implementation.
- Evaluate the impact of these tools on a regular basis to determine whether there are any unintended racial disparities.

Promote Leadership Development

- Develop affirmative action policies for the recruitment, retaining, and advancement of minorities in probation departments.

Discussion

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

face, especially among minority populations who live in low-income areas, is an absence of viable community-based options for their probationers. The 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 should 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; a stronger commitment to accessing existing and new services in the areas of treatment, vocational training, education and employment can level out racial differences due to inaccessibility to services.

Supervising probation officers should use discretion properly when faced with assessment and classifi-

BEST PRACTICE: JUVENILE PROBATION

AGENCY: Santa Cruz County Probation Department

CONTACT: Judy Cox, Chief Probation Officer

ADDRESS: P.O. Box 1812
Santa Cruz, CA 95061-1812

PHONE: (831) 454-3800

INITIATIVE: Juvenile Detention Alternatives Initiative

GOAL: To reduce the detention population and disparity in detention among Latino youth

BEST PRACTICE: Increasing the cultural competency of probation staff and partnering with community-based social service agencies to provide a more effective system of diversion from detention.

DESCRIPTION: With support from the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative (JDAI), the Santa Cruz County Probation Department developed their Juvenile Detention Alternatives Initiative in 1992 to reduce unnecessary detention as a response to juvenile crime. The site has since been designated as a JDAI Model Site.

In partnership with the county's Latino Strategic Planning Collaborative and the Latino Affairs Commission, a core working group of probation staff formulated a "Disproportionate Minority Confinement Checklist" of strategies to address the problem of overrepresentation of Latino youth. Acknowledging that there are many social and economic factors that contribute to disparity, and that these are largely beyond the Commission's control to change, they conducted internal audits and collected data to identify specific policies, procedures and programs within their sphere of control that were working against youth of color.

They found that a lack of Spanish-speaking probation staff was impeding quick release of detained Latino youth to their families. Also, existing diversion programs did not provide culturally or linguistically

appropriate interventions, which contributed to low rates of diversion from detention and higher rates of problems encountered within alternatives to incarceration for Latino youth.

Mapping key decision points and developing objective risk-based detention criteria created an internal structure for reducing disparity. The objective screening process was designed to assure that only high-risk youth would be detained, and that alternative programs and procedures would be used for those who were low- to medium-risk.

Adding new community-based diversion partners, increasing the number of bilingual staff at existing programs, and spreading a continuum of services to distant parts of the county helped to increase diversion from detention for Latino youth. A partnership was forged with, *Barrios Unidos*, a local organization that focuses on violence prevention and gang reduction, encourages parental involvement, and operates evening reporting centers for Latino youth, all of which can serve as alternatives to detention.

IMPACT: In 1997, court-aged Latino youth comprised 31% of the general population in Santa Cruz County, but made up 64% of detained youth. By 2007, the number of Latino youth in the general population increased to 50%, but their proportion in detention was down to 55%. Between 1996 and 2007, the average daily number of detained youth fell from 51 to 23. The site continues to struggle with disparate rates of contact for minorities in comparison to nonminorities, but is laudable in its acknowledgement of and commitment to achieving equal treatment for all youth regardless of background.

MATERIALS AVAILABLE: Documents describing the Santa Cruz Juvenile Detention Alternatives Initiative available online: http://sccounty01.co.santa-cruz.ca.us/prb/pdf/JDAI%202006/Table_of_Contents.asp.

Materials are also available on the JDAI website at: <http://www.jdaihelpdesk.org/Pages/SantaCruzCountyCA.aspx>.

cation decisions such as overrides, structuring the size and characteristics of caseloads, conducting supervision and monitoring of probation officers, and making decisions regarding programming for probationers. In the absence of effective standards and supervisory accountability systems, these decisions are vulnerable to excessive subjectivity which could allow racial bias.

Judges and probation officers should work with one another to develop pre-sentence investigation processes that can better help judges with disposition, focusing on specific information such as substance abuse problems, mental health status, risk assessment, and the availability of community-based

treatment and service programs.

One objective that is 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 the community that they serve. In essence, this involves engaging the community in its work to provide fair and racially sensitive services to offenders under supervision. The American Probation and Parole Association (APPA) adopted a national policy that encourages changes in the way that probation agencies function. This policy, called “Broken Windows Probation,” calls for the practice of inclusivity—both formally and informally—when probation administrators devel-

BEST PRACTICES: JUDICIARY AND PROBATION

AGENCY 1: Judicial Branch of Arizona, Maricopa County

CONTACT: Barbara Rodriguez Mundell,
Presiding Judge of the Superior Court

ADDRESS: Downtown Phoenix Central Court Complex
201 West Jefferson
Phoenix, AZ 85003

PHONE: (602) 506-6130

AGENCY 2: Maricopa County Adult Probation Department

CONTACT: Barbara Broderick, Chief Probation Officer

ADDRESS: Downtown Justice Court Center
620 W. Jackson Street
Phoenix, AZ 85006

PHONE: (602) 506-3871

INITIATIVE: Spanish-speaking DUI Court

GOAL: To close the gap in the deficiency in services available to the Spanish-speaking population and to offer improved treatment outcomes.

BEST PRACTICE: Research indicates that the most effective interventions target current factors that influence behavior, are aimed toward a specific offender population, and provide learning skills specific to their culture, thereby increasing community safety by reducing recidivism.

DESCRIPTION: First established in 1998, the Driving Under the Influence (DUI) Court is designed to reduce drinking and driving for people convicted on felony DUI charges and sentenced to probation. The DUI court judge, prosecutor, public defender, probation officer and treatment professional work as a team to assist the rehabilitation of participants. Under the supervision of the adult probation department, participants meet with a DUI court judge at least once a month, attend support group meetings, enroll in substance abuse treatment, and participate in victim impact panels.

Preliminary research findings suggest an overall effectiveness of the DUI court, with more than 80% of participants successfully completing their requirements and recidivating (defined as any new traffic-related offense, including a DUI offense) at half the rate of a control group that was placed on standard probation. A Spanish-language version of the DUI court was established in 2002. Participants may choose the most appropriate DUI Court for their language needs, and translation technology is available for non-Spanish speakers who attend the Spanish language sessions.

IMPACT: Outcome data for participants in Spanish-speaking DUI Court during 2004 show significant improvements over regular DUI court during the same period:

- 10% increase in abstinence from alcohol;
- 36% increase in employment or education; and
- 200% increase in stability in permanent housing.

MATERIALS AVAILABLE: Contact the Maricopa County Adult Probation Department.

op policies, initiate programs, develop supervision strategies and deliver services. This policy can help reduce racial disparity because the organizations which represent public opinion on the need to reduce disparity are involved in the process. The recommendations of the APPA include the following suggestions for local probation offices:⁶⁶

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

Jail and Prison Custody

Research and Assessment on Disparity

- Given the predominantly minority composition of the population in prisons and jails contrasted with the predominantly white composition of the custodial staff and managers in most institutions, sensitivity to perceived racial bias is especially critical in these institutions. Therefore, it is important that both staff and inmates in each institution are provided with the assurance that the issue of racial disparity in treatment is a concern to the administration. Racially disparate treatment may exist in the form of accessibility to programming, health care, educational opportunities, and inmate jobs within the prison or jail. Other areas of disparate treatment may also be evident; research and assessment of the system with a concentration on treatment by race will uncover these.

Toward that end, the administration should form a working group consisting of a representative from each department in the institution, as well as inmate representatives, to review all policies and practices to ensure that necessary steps are taken to address racially disparate treatment of inmates. To the extent that racially disparate treatment is observed, 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 Race Relations 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 these tensions.
- Establish a plan for the routine monitoring of gang formation and interracial hostilities among inmates. Hold regular interventions to discourage gang formation and defuse race-based hostilities.

Use Affirmative Action in Recruitment and Leadership

- Develop affirmative action policies for the recruitment, retention, and professional advancement of persons of color. Racially and ethnically diverse staff will ease racial tensions between staff and inmates and will improve system legitimacy.

Utilize Community Resources to Augment Services

- Establish mechanisms that allow institutional staff to collaborate with community-based groups, faith-based organizations, and social service agencies from where substantial portions of the inmate population are drawn to facilitate better access to services once released, improved communication, and frequent interaction with family members.

BEST PRACTICES: PRISONS

AGENCY: Ohio Department of Rehabilitation and Correction

CONTACT: Robert O.E. Keyes, Deputy Director,
Office of Human Resources

ADDRESS: 1050 Freeway Drive, North
Columbus, Ohio 43229

PHONE: (614) 752-1795

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 Ohio Department of Rehabilitation and Correction (ODRC) made a commitment to eliminate racism in all facets of its operations. The ODRC 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.

A variety of activities were pursued to reduce racial tensions in the prisons, including a monthly viewing of cultural awareness programs that highlighted a different culture each month; a self-esteem program; a concert series which included performances by inmates and staff; spiritual retreats every six months led by prison ministries; and an annual cultural recognition day which featured a wide variety of inmate heritage, speakers, musicians and food.

Human resources strategies included 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 broad recruitment network including the Urban League, NAACP, Human Services, Black Ministerial Alliance, and numerous community action agencies and colleges; advertising statewide in Hispanic newspapers and radio stations; holding job fairs in urban centers; and implementing a centralized recruitment, assessment and selection process for all employees in order to eliminate bias and favoritism in hiring.

The ODRC Bureau of Equal Employment Opportunity was redirected to investigate complaints of racial discrimination and to maintain statistics by race and sex for all areas of employment. Emphasis

was placed on career development, mentoring, and cross training between employees with diverse professional backgrounds and has increased the use of minority businesses.

The ODRC also increased the level of cultural diversity training. To assist new employees to become more tolerant of those who are different from them, the pre-service training covers a broad range of issues regarding race, gender, age, religion and disabilities. The training emphasizes improvements in efficiency and effectiveness in communication in dealing with fellow employees, as well as with inmates.

Mandatory in-service training includes a short mandatory session on EEO-related topics, including sexual discrimination and discrimination based on the seven protected classes.

Elective in-service course offerings include a 16-hour cultural diversity facilitator training course designed to prepare employees to facilitate training for their fellow employees. The elective communications instructor course includes a session about cultural sensitivity, including cross-cultural communication and the potential difficulties in such communications. The course also explains how the understanding of cultural, physical, gender, and age barriers assists with the communication process.

IMPACT: In an institutional setting where 51% of inmates are minorities, minority staff increased from 11% in 1982 to 20.6% in 2008; minority representation in upper management has increased from 36% in 1997 to 37% in 2008.

MATERIALS AVAILABLE: Anti-Defamation League (2003). *Anti-Bias Training Resources: A Workplace of Difference Program*. New York: Anti-Defamation League (2003).

Ohio Department of Rehabilitation and Corrections (1997). *Erasing Racism*. Columbus: Ohio Department of Rehabilitation and Corrections.

Wilkinson, R. & Unwin, T. (1999). Intolerance in Prison: A Recipe for Disaster. *Corrections Today*. Available online: <http://www.drc.state.oh.us/web/Articles/article49.htm>

- With parole/reentry personnel, create as seamless a transition from prison to life after prison as possible so as to increase prospects for successful, law-abiding offender reintegration. Concentrate efforts in communities where released offenders are likely to relocate, and recognize that high minority areas are often deficient in essential services for those who are released.

Assess Program Implementation

- Although not specifically designed to reduce racial disparity, a well-known instrument that is regularly utilized in institutional settings is the Correctional Program Assessment Inventory. This instrument was first developed in 1992 by two highly regarded criminologists, Paul Gendreau and Don Andrews, and continues to be used in institutions around the nation to measure the degree to which programs are being implemented as designed. It is a tool that can be used among others to ensure that programs are being used as they were intended and for all those who need them. The assessment inventory is guided by six principles:
 - Program implementation
 - Client pre-service assessment
 - Program characteristics
 - Staff characteristics and practices
 - Evaluation and quality assurance
 - Other procedures, including record keeping, ethical guidelines, program stability, and formal program oversight.

Each component of the program is scored and a final score indicates the fidelity of the program to its original intentions.⁶⁷

Discussion

Unbridled discretion among prison and jail staff and administrators can worsen racial disparity in institutions. Jail and prison administrators should examine their use of discretion in areas of job and housing assignments, inmate disciplinary action, access to substance abuse and mental health treatment, educational opportunities, vocational training, strip and cell searches, and drug testing. Prison and jail administrators should institute evidence-based, race sensitive, objective, and validated guidelines.

Some specific suggestions include:

- Establish policies, procedures and reporting requirements
- Identify criteria for use of discretion, (e.g., drug testing of specific prisoner)
- Require supervisory review of grievance reports
- Provide independent appeal or grievance procedure
- Identify both legal requirements and progressive practices
- Access and utilize resources provided by professional associations, such as standards, accreditation, and best practices
- Develop a credible grievance process so that complaints are monitored
- Ensure that internal affairs investigators are sensitive to racial dynamics within a facility and are themselves a diverse group to give credibility to investigations
- Install video cameras where incidents frequently occur
- Insist on zero tolerance for acts of overt discrimination and intolerance. Racial tension creates a security risk for all.
- Provide appropriate, high-quality, well-structured cultural competency trainings to sensitize staff to racial issues

An absence of prison programming makes recidivism much more likely upon release from prison or jail. There is ample evidence in the research literature that some programs are effective at rehabilitating offenders; these should be pursued vigorously and implemented wherever possible. The principles that guide much of the literature on what works should be prioritized as overarching goals of imprisonment.

Parole and Reentry

Research and Assessment of Disparity

- 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
 - Development and imposition of the parole release plan and conditions
 - Monitoring of parolee compliance
 - Decisions to violate a parolee for non-compliance

The review should identify ways that these decisions may produce racially disparate results, and should be followed with developing appropriate corrective measures where appropriate.

- Parole authorities and reentry workers should carefully review revocation practices and construct a system of graduated sanctions for responding to non-compliance. At present, practitioners at this stage 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 treatment, and others, and locate the resources to respond accordingly.

Establish Working Relationships with Community-Based Organizations

- Parole administrators and reentry supervisors should establish and maintain working relationships with faith-based organizations and public and private service organizations in communities in which significant numbers of released inmates reside. These organizations may then be actively involved in developing a release plan for persons

about to be released, and subsequently in providing the necessary services to assist in successful reintegration.

- Parole offices should be decentralized in these communities so that there is frequent interaction with the community. This will assist parole officers in learning about programming in the community and to become known by residents and program staff in the area as well. This will facilitate their efforts to involve the community in assisting released inmates in their 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 competency training for members of the parole board, parole officers, and supervisors. Encourage broad-based interaction with the professional community and general public on racial and ethnic concerns among newly released inmates.

Discussion

Parole agencies are under increased pressure to balance the political and public safety concerns of inmate release with the realities of prison crowding,

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.

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

As expressed earlier in this manual, the War on Drugs has resulted in many drug addicts, especially minorities, being imprisoned for crimes committed to support their addiction. It can be argued that these individuals would have been better served through treatment; the high costs of prisons to state budgets could have been avoided as well. If these individuals are not provided with treatment in prison, they will be very likely to resume their old lifestyles upon release. The availability of substance abuse programming in minority communities should be improved to offset this reality.

Arrangements for transition from prison must address the poor adjustment skills that often accompany this phase and precipitate the return to prison. The Bureau of Justice Statistics reports that 798,202 inmates were released to parole at yearend 2006, 37% of whom were serving time for a drug offense.⁶⁸ Participation in effective programming at this release point is a strong predictor of reoffending. Substance abuse programs are less accessible to minorities because they are not as readily available or affordable in their communities. Parole agencies and reentry workers should focus their efforts on funneling resources to where they are most needed.

Temporary housing (e.g., halfway houses or recovery houses) for inmates nearing their release date can provide supervision and structure prior to the actual release to the community. These supportive and controlled environments offer an opportunity to deal with issues that are often associated with return to prison such as drug or alcohol relapse and unemployment.

Similar to issues in probation and institutions, parole officers' discretion can lead to disparate treatment, based inappropriately on an inmate's race. Without standardized procedures for assessment, case levels, supervision and monitoring, decisions regarding which offender clients receive specific services is subject to unchecked discretion.

Administrative Options

Policymakers, managers, practitioners, and line staff at each stage of the criminal justice system have a responsibility to assess and reduce unwarranted racial disparity. A systematic and comprehensive approach is critical if disparities are to be eliminated.

Most decision points in the criminal justice system reflect input and actions from various actors in the

system. For example, sentencing decisions reflect input and/or advocacy from a probation presentence report, prosecutor, defense, and ultimately the judiciary. This means that a coordinated response is required. This response should pay special attention to the impact of decisions on unwarranted racial disparity. Moreover, because case outcomes depend on various figures within the system, progress in one

BEST PRACTICES: STATE AGENCIES

AGENCIES: Delaware Criminal Justice Council
Delaware Supreme Court

CONTACTS: Jim Kane, Executive Director, Criminal Justice Council

ADDRESS: Carvel State Office Building, 10th Floor
820 N. French St.
Wilmington, DE 19801

PHONE: (302) 577-8693

INITIATIVE: Delaware Racial and Ethnic Fairness Summit

GOAL: To develop a broad-based approach to address the critical issue of racial and ethnic fairness.

BEST PRACTICE: Involving the criminal justice system and the community, working together to identify problems and propose solutions designed to reduce unwarranted disparities

DESCRIPTION: In September 2007, the Delaware Criminal Justice Council and the Delaware Supreme Court cosponsored a conference that convened criminal justice and community leaders from across the state to focus on strategies for improving racial and ethnic fairness in the state criminal and juvenile justice systems. More than 75 key stakeholders participated in the summit, including leadership from state government, courts, corrections, law enforcement, prosecution, defense, and community organizations. Presenters at the summit included national and state experts engaged in addressing racial fairness in the criminal justice and juvenile justice systems.

A key theme of the summit was that achieving racial and ethnic fairness is important for two reasons. The first reason is because

democratic societies should strive to maximize fairness in all institutions. Second, to the extent that the system is perceived as fair by all citizens, it will be better able to gain the trust and confidence of the public and thereby develop effective public safety initiatives. To achieve these goals, summit participants focused on developing recommendations designed to enhance fairness in the areas of data collection, training, resources, and policy development, including:

- Developing a comprehensive system to track all decision points from arrest to disposition (including diversion) would aid in developing strategies to address unwarranted disparities;
- Using the model for reporting disproportionate minority contact (i.e., a relative rate index) in the juvenile system for the adult system as well;
- Reviewing sentencing legislation for any unintended racial/ethnic effects;
- Increasing hiring and retention of minorities; and
- Enhancing diversity in leadership positions

IMPACT: The summit report was distributed to all attendees, all members of the Delaware Criminal Justice Council, and to all members of the General Assembly. Recommendations are under review by the Council to determine applicability and feasibility within particular agencies or criminal justice components.

MATERIALS AVAILABLE: Supreme Court of Delaware and Delaware Criminal Justice Council (2008). *Racial and Ethnic Fairness Summit Summary Report*. Dover: Supreme Court of Delaware. Report available online: <http://cjc.delaware.gov/PDF/Delaware%20summit%20report%20111307.pdf>

stage can easily be counteracted by decisions made in another stage. For instance, law enforcement efforts designed to reduce the use of racial profiling may be impeded by a mayoral prioritization of suppressing the drug problem through mass arrests; suppression efforts frequently translate into increasing arrests in minority communities. Coordination early on between the law enforcement agency and the mayor's office in this example might serve to ensure that both are working in the same direction.

As a proactive measure, state lawmakers should consider adopting Racial Impact Statement policies, measures which require an assessment of the projected racial and ethnic impact of new policies prior to adoption. Such policies enable legislators to assess any unwarranted racial disparities that may

result from new initiatives and to then consider whether alternative measures would accomplish the relevant public safety goals without exacerbating disparities. In 2008, Iowa and Connecticut became the first states to adopt such measures, and in Minnesota the Sentencing Guidelines Commission is utilizing a similar process developed internally (see *Best Practices* in this section).

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

Data Collection and Analysis

- Assess the degree to which racial disparity is evident at each stage of system.
- Use forums such as community corrections boards or criminal justice coordinating councils,

BEST PRACTICES: STATE SENTENCING COMMISSION

AGENCY: Minnesota Sentencing Guidelines Commission

CONTACT: Isabel Gomez, Executive Director

ADDRESS: 525 Park Street, Suite 220
St. Paul, MN 55103

PHONE: (651) 296-0144

INITIATIVE: Racial Impact Statements

GOAL: To better understand the issue of the racial impact associated with new legislative crime proposals and to convey it effectively to policymakers.

BEST PRACTICE: Provision of objective information and data to inform and enrich discussions about the racial impact of crime policies and sentencing reform proposals.

DESCRIPTION: For many years Minnesota has had the dubious distinction of being one of the leading states in the nation in regard to the persistent disparities between the number of people of color in the state's population and the number in the prison population. Members of the Minnesota legislature have frequently expressed concern about the problem.

In 2006, staff at the Minnesota Sentencing Guidelines Commission created a collaborative with professors Kevin Reitz and Richard Frase at University of Minnesota Law School and with researchers at the Center on Race and Poverty and the State Court Administration to design a large-scale research effort to better understand the prob-

lem. Professor Reitz had proposed the introduction of racial impact statements in his initial work in 2002 to revise the American Law Institute's Model Penal Code for sentencing, and the commission began the practice of reporting the potential racial impact of new crime bills to the legislature during the 2007 legislative session.

Initially, comments on racial disparity were added to legislative fiscal notes for bills that commission staff believed to have the potential for creating a disparate impact. More recently, a racial impact statement is sent to each bill's author(s), the relevant committee chairs, and legislative staffers for consideration alongside the bill.

Racial Impact Statements are not intended to be definitive comments on whether a particular bill should be enacted. Rather, they present objective facts that explain how a proposed bill may affect some racial groups more than others. This is usually accomplished by examining the racial composition of the particular segment of state residents who are expected to be disproportionately affected by the legislation. This analysis informs consideration of alternatives that can enhance public safety without exacerbating racial disparity in the criminal justice system.

IMPACT: The development of racial impact statements is still evolving and it is therefore too soon to assess the overall impact on policy development.

MATERIALS AVAILABLE: For more information about racial impact statements, contact the Minnesota Sentencing Guidelines Commission.

- to examine the issue of racial disparity and provide opportunities to address it.
- Advocate for increased funding for improvements in data collection and management so that racial disparities can be discovered and monitored.

Collaborative Actions

- Develop a framework for assessing which actors have input at each decision point of the system.
- Provide oversight and monitoring at each deci-

- Establish a strategy for reducing disparities at each stage of the system. Clearly articulate objectives and set deadlines for completing them.
- Collaborate with national and state organizations to develop model codes, guidelines, and policies to reduce disparities.
- Call for strong leadership to prioritize racial justice at each stage of the system.

BEST PRACTICES: STATE COMMISSION ON RACIAL DISPARITIES

AGENCY: Wisconsin Governor’s Office

CONTACT: Lindsey D. Draper, Commission Staff Director

ADDRESS: Office of Justice Assistance
1 South Pinckney Street, Suite 600
Madison, WI 53702

PHONE: (608) 266-3323

INITIATIVE: Commission on Reducing Racial Disparities in the Wisconsin Justice System

GOAL: To determine whether racial disparity is present in the criminal justice system at any stage (from arrest to parole), and to recommend strategies and solutions to reduce racial disparity.

BEST PRACTICE: Assess the degree to which disparity is evident at each stage of the criminal justice system.

DESCRIPTION: African Americans comprise just 6 percent of the overall population in Wisconsin, yet they comprise 43 percent of the state’s prison population. Spurred by concern about this, and at the urging of the legislature’s Black and Hispanic Caucus, Governor James Doyle, Jr. created a 24-member Commission on Reducing Racial Disparities in the Wisconsin Justice System by executive order in March 2007. The commission held informational meetings and public hearings across the state and reviewed relevant research and documents submitted by a wide range of interested parties including citizens, policymakers, police, and prisoners.

While believing that some disparity is due to differences in involvement in crime as well as social and economic factors which are external to the criminal justice system, commission members concluded that racial disparity in the criminal justice system is a serious problem that should be addressed regardless of its cause. They determined that specific policies and practices, particularly in enforcement of the state’s drug laws, produce disparate impacts on people of color,

most heavily on African Americans. They cited evidence that African Americans are more likely than whites to be sentenced to prison for similar drug offenses, particularly in less serious cases. They also found a high rate of disparity in probation revocations and parole.

The commission issued a report in February 2008 that included more than 50 specific recommendations. Among them are the following:

- Collect data on race and ethnicity at all points of the criminal justice system process;
- Create a statewide process or entity to monitor and track progress in resolving issues related to racial disparity;
- Convene a conference of law enforcement executives to discuss the problem of racial disparity, and highlight the risks associated with entering into the criminal justice system;
- Adopt model prosecutorial guidelines designed to reduce racial disparity;
- Establish local community justice councils to develop community-based solutions to low-level offenses;
- Extend treatment oriented responses to crack cocaine users, who are typically African American, as is now common practice with methamphetamine users, who are typically white; and
- Establish a review process for discretionary decisions related to revocation.

IMPACT: Creation of Executive Order #251, Relating to the Findings of the Commission on Reducing Racial Disparities in the Wisconsin Justice System and the Creation of the Racial Disparities Oversight Commission.

MATERIALS AVAILABLE: The commission’s report available online: www.EqualJustice.wi.gov. Executive Order #251 available online: http://www.wisgov.state.wi.us/journal_media_detail.asp?locid=19&prid=3360

- Implement a zero tolerance policy on race-based decision making among key system actors.
- Arrive at system-wide consensus that discretion is

a professional judgment that should be transparent and should be reviewed regularly to ensure that misuse is avoided.

EXECUTIVE ORDER #251

WHEREAS, people of color receive disparate treatment in the criminal justice system throughout the nation and African-Americans and Hispanics constitute a disproportionate percentage of incarcerated populations in Wisconsin; and

WHEREAS, the Commission on Reducing Racial Disparities in the Wisconsin Justice System (the “Commission”) was created to determine whether discrimination is built into the criminal justice system at each stage of the criminal justice continuum and to recommend strategies and solutions to reduce the racial disparity in the Wisconsin criminal justice system; and

WHEREAS, the Commission included representatives from law enforcement, the legislature, the legal profession, the clergy, the judiciary, and the criminal justice system; and

WHEREAS, the Commission held information meetings, conducted public hearings throughout the state, reviewed letters and other submissions from private citizens and politicians to law enforcement officers and prisoners, and studied the reports of similar commissions impaneled in other states; and

WHEREAS, the Commission submitted a final report on its findings and recommendations to the Governor; and

WHEREAS, Wisconsin residents can benefit from a comprehensive and coordinated strategy, based on the Commission’s final report, to reduce racial disparities within the criminal justice system;

NOW, THEREFORE, I, JIM DOYLE, Governor of the State of Wisconsin, by the authority vested in me by the Constitution and the laws of this State, do hereby:

1. Direct all state agencies with relevant information and capability (such as the Office of Justice Assistance, Department of Transportation, and Department of Corrections) to develop reporting mechanisms to track traffic citation, arrest, charging, sentencing and revocation patterns by jurisdiction and race using processes such as those developed through the Wisconsin Justice Information Sharing program (WJIS) and the District Attorney IT PROTECT system; and
2. Direct the Office of Justice Assistance to collaborate with the judiciary, the Department of Justice, appropriate law enforcement personnel, human services and educational personnel (including the technical colleges throughout the state) to develop curricula for professional training in each discipline that addresses factors contributing to racial disparity consistent with the Commission’s recommendations; and
3. Direct the Department of Corrections to maintain and expand re-entry programs to assist inmates in successfully returning to their communities, which shall include:
 - a. Ensuring that inmates eligible for driver’s licenses be given the opportunity to work towards obtaining or reinstating a license, or
 - b. In situations where a driver’s license is not available, ensuring a valid state identification card is made available; and
 - c. Developing a protocol for the provision of court-ordered and inmate-specific treatment needs, particularly in the areas of alcohol and other drug abuse and mental health services; and
4. Direct the Department of Corrections to develop and implement a mentoring plan for inmates,

which shall include:

- a. Eliminating unnecessary barriers that prevent persons mentoring inmates during incarceration from continuing to mentor the inmates after they have been released, and
 - b. Developing a collaboration with the community and faith-based organizations to facilitate successful behavioral modification, rehabilitation, and community re-entry; and
5. Direct the Department of Corrections to maintain and expand the following measures with regard to probation and parole revocation:
- a. Establish a process of review and reporting on the level of discretion probation and parole agents have in initiating revocation proceedings; and
 - b. Review and consider intermediate sanctions and alternatives to revocation or incarceration in cases where discipline is necessary, but public interest and safety is best served at the community level (such as electronic monitoring, transitional living beds, etc.); and
6. Direct the Department of Corrections to implement the following measures with regard to prison discipline:
- a. Review the prison discipline system and the use of extension of inmates' mandatory release date as a sanction; and
 - b. Create a computerized system to better maintain the records of issuance and adjudication of major conduct reports; and
7. Direct the Office of Justice Assistance to conduct a study on prosecutorial discretion, similar to its Race and Sentencing study, giving particular attention to the role of criminal history; and
8. Create the Racial Disparities Oversight Commission; and
9. Direct the Racial Disparities Oversight Commission to exercise oversight and advocacy concern-

ing programs and policies to reduce disparate treatment of people of color across the spectrum of the criminal justice system; and

10. Provide that the members of the Racial Disparities Oversight Commission shall be appointed by the Governor to serve at the pleasure of the Governor; and
11. Provide that the members of the Racial Disparities Oversight Commission will be comprised of no more than four (4) members including representatives from law enforcement, the legal profession, the judiciary, and the criminal justice system; and
12. Provide that there will be one chairperson of the Racial Disparities Oversight Commission designated by the Governor from among the Racial Disparities Oversight Commission's membership; and
13. Provide that the Racial Disparities Oversight Commission shall meet as necessary, but not less than two (2) times per year.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Wisconsin to be affixed. Done at the Capitol in the City of Madison this thirteenth day of May in the year two thousand eight.

JIM DOYLE

Governor

By the Governor:

DOUGLAS LA FOLLETTE

Secretary of State

Conclusion

Race-based differences in individual treatment are some of the most difficult challenges in American society today, and these are particularly apparent in the arena of criminal justice. Racial disparity in the criminal justice system is widespread and its perpetuation threatens to challenge the principle that our criminal justice system is fair, effective and just.

If the criminal justice system is to be viewed as fair, it needs the support and cooperation of the public. The perception or existence of racial bias or unwarranted racial disparities reduces public confidence in the system, which will in turn affect public safety outcomes.

Criminal justice practitioners cannot eliminate all disparities from the system alone. The high rates of minority involvement in the system reflect a complex set of social, economic, and community problems; in many respects, minority overrepresentation in the criminal justice system is the end result of disparate treatment in other areas, such as equal access to education, jobs, sustainable income, and affordable housing. Criminal justice practitioners might view themselves as being in the unfortunate position of being responsible for repairing racial differences over which they have little control. We hope this manual offers feasible solutions through describing ways by which practitioners can address bias at various points in the system. We advocate for a systematic, holistic approach which considers the long-term impact of decisions on the racial composition of the criminal justice system. This should involve the use of resources, professionally informed discretion, leadership, accountability, public in-

volvement, and coordination among many participants in the system.

Policymakers should remain involved and informed about evolving best practices to eliminate the practice of disparate treatment of persons of color within the criminal justice system. Moreover, policymakers can advocate for reform through sponsoring legislation that remedies racial and ethnic disparity in the criminal justice system.

Practitioners, policymakers, academics and advocates in the criminal justice field have a duty to challenge themselves to lead a national conversation on the role of race in crime and punishment. If jurisdictions can accomplish this successfully, we can expect to see other fields follow suit. This would be an important step toward addressing the racial disparity that permeates our society.

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Endnotes

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