

WASHINGTON STATE
MINORITY AND JUSTICE COMMISSION

COMMISSION MEETING



SEATTLE UNIVERSITY SCHOOL OF LAW
SEATTLE, WASHINGTON
FRIDAY, APRIL 10, 2015, AT 8:45 A.M.

**WASHINGTON STATE MINORITY AND
JUSTICE COMMISSION**
COMMISSION MEMBERS
2015



Justice Charles W. Johnson
Co-Chairperson
Washington State Supreme Court

Justice Debra L. Stephens
Washington State Supreme Court

Judge Veronica Alicea Galvan
Des Moines Municipal Court

Judge Lisa L. Atkinson
Shoalwater Bay Tribal Court

Professor Lorraine Bannai
Seattle University School of Law

Mr. Jeffrey A. Beaver
Graham and Dunn

Ms. Ann Benson
Washington Defenders Association

Professor Robert C. Boruchowitz
Seattle University School of Law

Mr. Steven M. Clem
Douglas County Prosecuting Attorney

Professor William Covington
Univ. of Washington School of Law

Sergeant Adrian Diaz
Seattle Police Department

Judge Lisa Dickinson
Judge Pro Tem

Judge Theresa Doyle
King County Superior Court

Ms. Marie Eggart
Asotin County Clerk

Judge Deborah D. Fleck, Retired
King County Superior Court *Emeritus*

Professor Jason Gillmer
Gonzaga University School of Law

Justice Mary I. Yu
Co-Chairperson
Washington State Supreme Court

Ms. Bonnie J. Glenn
Wash. State Juvenile Justice & Rehabilitation Adm.

Mr. Russell D. Hauge
Attorney at Law

Mr. Uriel Iniguez
Washington State Commission on Hispanic Affairs

Ms. Yemi Fleming Jackson
Microsoft Corporation

Ms. Annie Lee
Executive Director, Team Child

Ms. Carla Lee
King County Prosecuting Attorney's Office

Commissioner Joyce J. McCown
Court of Appeals, Division III

Judge LeRoy McCullough
King County Superior Court

Ms. Karen Murray
Associated Counsel for the Accused

Judge Lori-Kay Smith
King County Superior Court

Mr. Travis Stearns
Washington Defenders Association

Judge Gregory D. Sypolt
Spokane County Superior Court

Judge Vicki J. Toyohara
Judge Pro Tem, *Emeritus*

Judge Dennis D. Yule, Retired
Benton & Franklin Counties Superior Court



MINORITY AND JUSTICE COMMISSION

SEATTLE UNIVERSITY SCHOOL OF LAW, SEATTLE, WASHINGTON

FRIDAY, APRIL 10, 2015 (8:45 A.M. - NOON)

JUSTICE MARY YU, CO-CHAIR

JUSTICE CHARLES W. JOHNSON, CO-CHAIR

AGENDA

CALL TO ORDER (8:45 a.m. – 8:55 a.m.)

- Call to Order and Introductions
- Approval of February 13, 2015, Meeting Minutes

CO-CHAIR REPORTS (8:55 a.m. – 9:20 a.m.)

- Update on Reentry Symposium – May 28, 2015
- Perceptions of Justice Presentation at Appellate Judges' Conference
- Membership Update: Reappointment of Co-Chair; Appointment of Annie Lee and Seeking of New DMCJA Representatives
- Budget

COMMITTEE REPORTS (9:20 a.m. – 9:45 a.m.)

- **Outreach Committee** – Annual Report, Website, and New Artwork
- **Workforce Diversity Committee** – LSAC Grant (Diverse Bar & Bench Project), and Judges of Color Reception

STAFF REPORT (9:45 a.m. – 10:00 a.m.)

- MJC Legislative Update
- Youth and Justice Forums – Past & Upcoming Forums
- Access to Justice Conference – June 12-14, 2015, Wenatchee

PRESENTATIONS AND DISCUSSION (10:00 a.m. – 12:00 p.m.)

- **Bending the Arc: Building Leaders Who Make A World of Difference** – David Domke, *UW Department of Communication Professor and Chair, Center for Communication, Difference and Equity*
- **Presentations by Seattle University Law Students and/or Faculty**
- **Discussion** – What Can the Commission do in Response to the Issues Raised by Ferguson?

ADJOURNMENT

NEXT MEETING

Friday, June 12, 2015

Wenatchee Convention Center



Washington State Minority and Justice Commission (WSMJC)
 Friday, February 13, 2015
 8:45 a.m. – 12:00 p.m.
 AOC SeaTac Office, SeaTac, WA



MEETING NOTES

Commission Members Present

Justice Mary Yu, Co-Chair
 Justice Charles Johnson, Co-Chair
 Judge Veronica Alicea-Galvan
 Judge Lisa Atkinson (via teleconference)
 Prof. Lori Bannai
 Ann Benson
 Prof. Robert Boruchowitz (via teleconference)
 Steve Clem
 Sgt. Adrian Diaz
 Judge Lisa Dickinson
 Judge Theresa Doyle
 Marie Eggart
 Judge Deborah Fleck
 Bonnie Glenn
 Russell Hauge
 Yemi Jackson
 Karen Murray
 P. Diane Schneider
 Judge Lori Smith
 Travis Stearns
 Justice Debra Stephens (via teleconference)
 John Yasutake
 Judge Dennis Yule, Ret. (via teleconference)

Members Not Present

Jeffrey Beaver
 Prof. William Covington
 Prof. Jason Gillmer
 Uriel Iñiguez
 Carla Lee
 Commissioner Joyce McCown
 Judge LeRoy McCullough
 Judge Gregory Sypolt

AOC Staff Present

Cynthia Delostrinos
 Danielle Pugh-Markie

Guests

Erin Apte
 Lucas Bernardo
 Tamara Gaffney
 Hillary Madsen

APPROVAL OF MINUTES

The meeting minutes from the November 14, 2014, meeting were approved.

CO-CHAIRS REPORT

MEMBERSHIP

New Commission Member – Steve Clem

Steve Clem is the Commission’s new representative for the Washington Association of Prosecuting Attorneys (WAPA). Mr. Clem worked as an attorney in legal services and private practice before he was elected as the Douglas County Prosecuting Attorney in 1995, where he has been for the past 20 years.

SUPREME COURT SYMPOSIUM

Mark your calendars for the next Symposium at the Supreme Court, which will take place on May 28, 2015, from 8:30 a.m. – 12:30 p.m. at the Temple of Justice. Justice Yu and Cynthia had a meeting to come up with ideas for possible speakers and topics. Justice Yu will be calling

upon a subcommittee of Commission members who expressed their interest in helping put this event together. We plan to approach MacArthur about possibly providing assistance, as they were key in helping bring out a speaker for last year's forum and also provide books for the justices. We would like the topic of this year's forum to be on reentry and the barriers that people face when trying to reenter society after incarceration.

Commission Speaking Engagements – Bellingham City Club

The Commission has recently received a number of speaking requests, and Justice Johnson and Justice Yu would like to invite other Commission members who are interested to volunteer to be "on-call" to maybe do some of these speaking engagements in the future. The requests are from groups and organizations that are interested in the topic of racial justice, juvenile justice, and are sometimes looking for a neutral voice to help facilitate a discussion on some of these issues.

Justice Johnson was recently in Bellingham doing a luncheon talk with the Bellingham City Club. The Bellingham City Club is an active group of community leaders that puts together monthly luncheons where they invite speakers on a number of different topics. For the month of January, they were interested in the issue of race in the justice system. The program was well received. After the presentation there were people who were interested in the work of the Commission and how to get involved. We are a statewide commission so it is important for us to participate in all parts of the state. As the Commission gets more exposure it is likely that we will be invited to have more of these discussions to address racial bias on a larger scale. Contact Cynthia at cynthia.delostrinos@courts.wa.gov if any members on the Commission are interested in being included on a list when there is a request for a speaker.

Judge Alicea-Galvan is scheduled to speak on March 4, 2015, at Bellingham City Hall. The title of the event is, "Examining Race: Civic Engagement Post-Ferguson, Where Do We Go From Here?"

It was recommended that staff create a hand-out on the Commission. The Outreach Committee would be the appropriate Committee to work on this.

PRESENTATION

YEAR Act HB 1481 / SB 5564

Hillary Madsen with Columbia Legal Services gave a presentation to the Commission on HB 1481, referred to as the YEAR Act. Ms. Madsen has been working on the YEAR Act with students from the University of Washington School of Law. The Minority and Justice Commission was active in supporting last year's Youth Opportunities Act, which passed and became law. The Legislature expressly stated that open juvenile records were a barrier to one's rehabilitation and reintegration, recognizing that people with juvenile records were being barred or experiencing real challenges in securing jobs, education, and employment. It is also important to think about racial disproportionality in records sealing. In 2013, there was a Washington study done that found that of the records eligible to be sealed, out of 70 percent that were white, 78 percent were sealed. In contrast, out of the 12 percent of African American records that were eligible, only 6-7 percent were sealed. For Native Americans it was even worse, out of the 5 percent that were eligible, only 2 percent were sealed. The same study looked at job applications and found that white kids who had an open criminal record were more likely to get a job than a black kid who had no criminal record.

The Youth Opportunities Act that passed last year created a routine record sealing process where when kids turn 18 and have been released from confinement, completed supervision, and have paid all legal financial obligations, there will be an administrative hearing on their 18th birthday where a judge will order their records to be sealed. There is no requirement for that individual to have to appear and no requirement for the person to have to notify anyone.

One of the problems with the Youth Opportunities Act that has arisen is the LFO and restitution component. The kids who do not have the ability to pay their LFOs or restitution in full will not be eligible to get their records sealed, which creates an economic disparity in who is and is not able to benefit from the recently enacted law.

The YEAR Act attempts to address the economic disparity by eliminating LFOs assessed to juveniles. It would give judges the authority at disposition to allow youth to work off restitution with community service and the discretion to decide whether the debt should be paid joint and severally when a juvenile turns 18 and the routine record sealing administrative hearing takes place. In the past, a judge could not seal a record if a juvenile had any outstanding LFOs. Under the YEAR Act, a judge can still seal a record if the juvenile has been making a good faith effort to pay. However, once sealed, the person still has the obligation to pay the LFO in full and if payments are stopped, the record becomes public again.

Ms. Madsen is always looking for superior court judges to testify in favor of the bill. She has been working with Judge Kitty-Ann van Doorninck and Judge Steve Warning who have been very supportive. Juvenile Court Administrators also testified in favor of the bill, and are excited about the provision that would allow research on the subject because there currently is not a lot known about juvenile LFOs.

Questions

Has there been any discussion about changing the 12 percent interest rate in Washington?

Yes—There is a bill that was introduced by Representative Roger Goodman that reforms the laws around LFOs, including changes to the current interest rate. The bill would also include a provision that would require that the DNA collection fee only be collected once per person.

What is the position of some of the other stakeholders?

There has been negative testimony from the County Clerks' Association. There is a philosophical difference of opinions as well as technical and operational problems that have been expressed. There is concern about juveniles paying restitution in full before their records are eligible to be sealed, as they believe that sealing is an incentive to pay outstanding LFOs. One of the main concerns that the Clerks have is the loss of revenue for counties. The Clerks have to comply with mandates, often times with no financial support. For most counties the collection of LFOs is a revenue source that they are using to maintain mandated programs. One of the biggest concerns for individual counties is the financial impact this bill will have on them. When a county loses revenue, the question becomes how do you continue to support the court system? Counties cannot ask for additional staff if this law comes into play, yet there is no way to perform what this bill asks without additional staff, without additional revenue. The Clerks are doing the best they can with collection of LFOs, which at one time didn't use to be the job of the Clerks. While there is agreement that some of the policies and practices around juveniles needs to change, they don't know if the answer is doing completely away with LFOs. They agree that there is a problem especially when a defendant does not have the ability to pay,

but the concern is where Clerks will receive the revenue they will likely be losing from no longer collecting LFOs.

The sheriffs testified with concerns about the bill noting that they don't have access to sealed records, and only prosecutors and courts do. The sheriffs would like access for making employment decisions and officer safety. Landlord groups are in opposition because they think LFOs should be paid or worked off in community service because it shows that the individual is being held accountable. Newspaper advocates generally think sealed records are a problem.

What happens when a record has been sold to commercial agencies and disseminated—wouldn't that defeat the purpose of sealed records if the information still exists and can be uncovered with these agencies?

Right now this is still an issue. However, in the consumer protection act people can challenge the inclusion of criminal records that have been sealed by going through a dispute process. This is an issue that may be brought back to the Legislature at a later time after this bill has been passed. There is also another bill going through the Legislature around banning the box that requires people to disclose certain criminal histories.

Are there certain crimes that are excluded from this bill?

Yes—the same crimes that were excluded from last year's Youth Opportunities Act are still excluded in this bill.

STAFF REPORTS

MJC LEGISLATIVE WATCH LIST

There are a few pieces of legislation introduced this session that are within the scope of the Commission's mission and that staff have been watching through the legislative process. The co-chairs are looking for leadership of Commission members, particularly superior court judges, to take the lead on some of these pieces of legislation given the need for the co-chairs to remain neutral on matters that may come before them in the future. Commission members can expect to see letters of support sent out on behalf of the Commission with Judge Doyle's name or another Commission members' name and signature. We are working on a way to be able to participate in this process but are still trying to figure out the best way to navigate without compromising positions. It is important that we are involved in this process and we are working on a way to continue to do so. Cynthia will continue to provide updates on the legislation that the Commission is "watching" to those Commission members who indicate they are interested in receiving updates.

Legal Financial Obligations (LFOs)

Judge Doyle and Cynthia participated in planning meetings with Representative Goodman weighing in on the draft of his bill. The goal of the bill is to reform current laws around LFOs in order to set the stage for more restitution to be paid to victims. The bill would require that restitution be paid before all other LFOs. It would eliminate interest on all non-restitution LFOs and would require judges to eliminate accrued interest when restitution has been fully paid. It requires that only one DNA fee be collected per person, and eliminate any fees for those who already have DNA on file. For purposes of "costs" (as opposed to "fees") the bill makes clear that courts can only apply "costs" if there is a finding of ability to pay. The bill defines "ability to pay" as non-indigent, using the definition of "indigent" under RCW 10.101.010. "Ability to pay" will be determined at the time of sentencing, not one's ability to pay in the future. Advocates

have told us about actual incidents when judges have said things like “the defendant may win the lottery” and make a determination on an individual’s future ability to pay based off of that belief. The provisions in this bill would eliminate that sort of abuse.

The current LFO statutes do not incorporate a due process requirement before a judge can hold an individual in contempt for non-payment of their LFOs, and that individual could face jail time. This bill would require a hearing on whether non-payment was willful before an individual is jailed for non-payment. There is a section added to the bill that would require the court to make a finding of willfulness and then issue a summons before issuing a bench warrant. When determining willfulness, the court will look at the individual’s ability to pay. The hope is that with clearer requirements it will become easier for courts to enforce LFOs properly and uniformly.

Questions

Does use of RCW 10.101.010 mean that anyone who comes before the court with a public defender will be released of LFO obligations?

Yes—but only of those LFOs that are defined as “costs” under the statute, not “fees” or “fines,” not the victim penalty assessment or restitution obligations. There was concern raised that a very high majority of defendants are appointed with a public defender, and while a majority of them do not have the ability to pay, there are some that do. Judges will appoint counsel if the individual comes to court without a lawyer without making the determination on ability to pay. It was also raised that one can still qualify for a public defender, but be required to give a promissory note to pay later for the services. Judge Doyle will raise these concerns with Representative Goodman.

Certificates of Restoration of Opportunity (CROP) – HB 1553

Last year, Columbia Legal Services (CLS) presented this bill to the Commission concerning certificates of restoration of opportunity (CROP). The bill was introduced in the legislature last year but was pulled. Judges and the Department of Social and Health Services wanted to know more about the bill and how it would be carried out. One of the big concerns was whether it was a certification of rehabilitation of the applicant. After the bill was pulled, the advocates at CLS did a lot of work to follow up with all of the groups that had expressed concerns. They worked with superior court judges and had a lot of their concerns addressed with this new bill. Currently, the superior court judges are in support of the new CROP bill, which is a fairly dramatic redraft from last year’s bill, as it addresses many of the concerns from the different stakeholder groups. There are over 90 different professions that are categorically barred to individuals with criminal records. This bill is intended for an individual with a criminal record to present to prospective employers or housing providers a certificate showing proof that they have remained crime free and have taken steps towards improving their lives. The certificates don’t require sealing or vacating a criminal record and acknowledges criminal history with an opportunity to show progress and positive steps taken to move beyond.

Racial Impact Statements

Racial impact statements are a tool for legislators to assess the racial impact of a particular piece of proposed legislation. Implementing racial impact statements in Washington was a topic of the past two Minority and Justice Commission and Sentencing Guidelines Commission joint meetings. Senator Bob Hasegawa was present in the audience at the last joint meeting that was held at the Tukwila Community Center on November 11, 2014. After the meeting, Cynthia and others who were present at the meeting were invited to participate in working sessions to help Senator Hasegawa create a draft of the racial impact statement bill that he wanted to propose during the upcoming legislative session.

Cynthia testified at the Senate policy committee hearing on behalf of the Commission, alongside Dave Boerner from the Sentencing Guidelines Commission, and Lillian Hewko on behalf of the Washington Defender Association. Many organizations signed on in support of the bill, and none signed on in opposition.

A companion bill has also been brought by Representative Sawyer in the House. Also, the Justice Reinvestment bill has explicit language authorizing and mandating racial impact statements.

Fair Chance Act – HB 1701

This bill addresses another aspect of reentry. The Commission was approached about supporting. Information on the bill is included in the packet.

ACCESS TO JUSTICE CONFERENCE

The Access to Justice Conference will be held in Wenatchee on June 12-14. The Commission will be having its June 12, meeting in Wenatchee at the same location in order to encourage Commission members to attend the ATJ Conference. The Commission will cover the cost of travel and lodging. Commission members will be responsible for covering their own registration fee for the conference which is \$250. The Conference is critical, and this year's theme focuses on racial equity.

The Commission meeting on June 12 will be from 10:00 a.m. – 2:00 p.m.. On the evening of the 12th there will be a reception. Saturday June 13 will be a full day of workshops. Cynthia will provide more details at next Commission meeting.

The Commission submitted two Conference proposals for programming. One of the proposals was put together and submitted in partnership with Access to Justice Leadership Cohort III, around the issues surrounding Ferguson and gaining a deeper understanding of racial equity. The other proposal was submitted by the Juvenile Justice Subcommittee and is a follow up to the Courts Igniting Change Conference looking at the school-to-prison pipeline, disproportionate practice of school discipline, looking at the issue from a community perspective.

TRIBAL STATE COURT CONSORTIUM

The first regional meeting of the Tribal State Consortium will be held at the Suquamish Tribal Court on February 25, 2015. Danielle Pugh-Markie has been working with Judge Cindy Smith of the Suquamish Tribal Court on putting together the agenda for the regional meeting. Invitations have been sent out to all levels of judges in Clallam, Jefferson, and Kitsap counties, and all of the tribal courts in that region. Heather Singleton from the Tribal Law and Policy Institute and Judge Thorne are going to help facilitate the dialogue.

Washington has an amazing resource on these issues in Judge Raquel Montoya-Lewis, one of four Native American judges at the state court level nationally. Her experience as tribal court judge, combined with her work as a professor on issues of racial disparity, make her particularly knowledgeable about the issues that our Commission deals with. We need to reach out to her about these meetings.

The purpose of having regional meetings is to bring together judges from tribal courts and state courts that sit in close proximity to one another, and help them build relationships with one another, talk about areas of overlap between the two courts, and try to identify areas where

practices and communication can improve between them. One of the most critical parts of the meetings is to gain a better understanding of the tribal court judicial operations, therefore all of the regional meetings will be hosted by tribal courts.

Given that we have Judge Atkinson on the Commission appointed as our tribal court representative, she should be our liaison to the Consortium on behalf of the Commission. We need to make sure that she gets all of the information about the Consortium meetings.

UPCOMING YOUTH AND JUSTICE FORUMS

The UW Law Academy is going to be held on March 13, 2015, at the University of Washington School of Law, and is working in partnership with the Commission and the MLK Youth and Law Forum. The MLK Youth and Law Forum will be celebrating its 25th anniversary and they are planning on doing three events this year. The first is a youth and law forum one-day event, which is in partnership with the UW Law Academy on March 13. The second event will be their traditional community event on Saturday, April 25, 2015, and the last event will be a dinner for volunteers and community partners in celebration of the 25th year of the MLK Youth and Law Forum.

The Commission is also sponsoring the Chelan Diversity Justice Day for Youth on March 25, 2015. There is money set aside in the budget for Commission members who want to attend the forums. The expectation is that you will be engaged, volunteer, and will talk to students. These forums are a real and active way that the Commission can reach out to youth. They present an amazing opportunity to share your love of the work that you do. They also present an opportunity to remove barriers between the community and the justice system.

We are always looking for giveaways for the students. A special thank you to Commission member Yemi Fleming-Jackson for donating Xboxes for the Tri-Cities Youth and Justice forum for the past two years. If you have anything we could provide to the youth as giveaways at the forums, please let staff know. It could not be stressed enough how impactful these youth and law events are for both the youth and the volunteers that participate.

REVITALIZING COMMITTEES

We would like to have all of the committees reestablished so that Cynthia can reach out to the committees when projects come up. Cynthia will follow-up via email with Commission members about which committee they would like to join. Everyone should join at least one committee. The committees will try to meet monthly unless it does not make sense to meet monthly.

Outreach Committee

The first and time-sensitive project of the Outreach Committee is to look at a draft of the Annual Report and provide edits. The last annual report from the Commission was in 2011. We need to get a report put together and make a decision on whether the report should cover 2012-2014. Cynthia has a draft of the Annual Report ready to be edited. The mission statement for the Outreach Committee has been to produce an Annual Report and to obtain and coordinate a program of acquiring artwork for use in Commission posters. Judge Yule has been in contact with the Onyx Fine Arts Cooperative, which is an organization in Seattle that is a collection of artists of African descent. A link to their website can be found at www.onyxarts.org. Judge Yule will connect with artist Ashby Reed about submitting artwork to the Commission. The ATJ Conference might be a good time to reveal a new poster for this year. The Committee will look into that possibility.

Workforce Diversity Committee

A possible new project for the Workforce Diversity Committee is to update the Judicial Officers of Color Directory. The Commission has been approached several times about providing the demographics for the Washington judiciary, and we don't have updated numbers. Approximately 25 percent of the new judges attending this year's Judicial College were judges of color. It would be nice if the Commission organized or hosted a meeting or reception for judges of color to meet. Often times the job can feel isolating and this meeting would provide an opportunity to talk about unique issues impacting judges of color who often times feel isolated. It would be a great effort of the Commission to support an event or ongoing meeting if someone wants to try to organize and host it. Ultimately, we want to create something ongoing. Maybe the Minority and Justice Commission could try to host something at the ATJ Conference or Fall Conference. It was mentioned that once judges of color are able to have a separate convening, other judges need to be educated about what the unique issues are.

Cynthia will follow-up via email with all Commission members asking them which committee they would like to join.

Civil Legal Needs Study

David Kennan provided a written summary updating the Commission on the status of the Civil Legal Needs Study. The Study is scheduled to be completed this spring or summer. If you have any thoughts or questions feel free to contact David Keenan directly. It is a really important study that will be the foundation of a discussion that everyone will use because it will address how poverty effects access and how legal aid is responding.

DISCUSSION

What is the Commission's Response to Ferguson, NY, and now Pasco?

A lot of people have asked what the Commission is doing in response to issues raised by Ferguson. The co-chairs wanted to open up the discussion to the Commission membership. What should we do? Is what we are doing now enough? We recognize the great work that the universities and law schools are doing and we don't want to duplicate efforts, but is there something that we can do that would be both timely and appropriate given our role as the Commission?

One of the things we could do is facilitate a dialogue between youth and law enforcement around issues involving use of force. In preparation of the Courts Igniting Change Conference, Commission member Bonnie Glenn was working with a group of young people who shared their stories about negative experiences they, their family, or their close friends had with police officers. It began a dialogue around some of those issues which sparked the youths' interest in participating in more dialogues and opportunities to talk about issues like these. Youth have an important perspective on these issues and we should pay attention to that and take the opportunity to provide education and a space to dialogue.

The recent events in Pasco, Washington, were brought up at the meeting. It was mentioned that one of the things that was different about the response in Pasco and the response in Ferguson was the transparency of law enforcement. In Pasco, immediately following the incident, the officers involved were named and the Chief was available to the media. Unlike in Ferguson where there was no willingness of law enforcement to identify the officer.

The Department of Justice is currently working with different community groups on these issues. They currently offer young people workshops on what to do when stopped by police. One observation of Ferguson is that it is a place where people who live together in the same community are so ignorant and detached from one another. This is a phenomenon that is happening in many urban areas throughout the country. Whatever the response is, it will have to be comprehensive and is going to take many years to address.

There must be an acknowledgment of the role of the judicial system in continuing to perpetuate a system that is inherently biased. As judges of color, it is very difficult to address institutional racism on a personal level. There exists a tension professionally, when you have the philosophy of service to the public and ideals of justice, but also an acknowledgement that we have a part in continuing to perpetuate an unjust system and not speak out against it. We cannot take the high ground and be in places of privilege and power within the structure. What does it mean to hold a position in a system that we know has bias? We work within structures that have been created to carry out institutionalized and structural racism. Justice is the best path to equality. The practice of principles is what we need to address. We need to review principals of justice and look into where they have been warped and where inequitable practices have been normalized. We also need to bring in our justice partners to address larger systemic issues, but we first have to acknowledge that the systemic and institutional bias exists.

Because of all the structures that have broken down in a system, do you hold the one police officer or the one prosecutor accountable, like what happened in Ferguson? There are a lot of areas that law enforcement can begin to look into and change such as hiring practices, leadership, policing practices, and helping officers cope with trauma. How do we look at some of these issues in a broader sense so that we can begin to make meaningful changes in the justice system? Sometimes for large structural changes it can take ten years. These are questions that we continually have to ask.

The justice system is much broader than just policing and implicit bias. If we are to be a leader in our state we need to consider holding a summit that is well planned, that takes on the whole justice system. We could invite the current FBI director to be the keynote speaker. We could invite prosecutors, defenders, law enforcement, community members, youth, and court personnel and plan something large. We could seek funding from other resources to decide the scope of the summit.

We could use Ferguson and Pasco as a microcosm and ask the question: what can we learn from these events? With those events as a backdrop, we can discuss cultural problems within law enforcement, implicit bias, LFOs, and the role of judges.

What we have learned from the current opposition to the King County Children and Family Justice Center protests is that the community's perception of how involved they are in the process and their view about what is going on in their community, is more informed than what judges and those within the system think they know about it. Only by joining them in an end of the prison industrial complex do you really understand the issues involved in Ferguson. While it would be great to have a professional and educational forum, these issues are really about the community interacting with those who work within the justice system. It is NOT just a justice system issue. There needs to be some way to include community or it doesn't matter what we all do, all they will see is that we don't care about them and that we don't and cannot see from their perspective. If we say we want a true dialogue, we have to be willing to change.

Jeff Beaver and Russ Hauge had been in discussions with the Washington Association of Sheriffs and Police Chiefs and the Criminal Justice Training Commission, all pre-Ferguson but still really talked about the issues later illustrated by Ferguson. There is a foundation in this arena that we can really build off of and it needs to be hand-in-hand with those organizations at a minimum.

Two prong approach—as we reach out to communities to have a dialogue with us, we also need to reach internally within administrations. Ask ourselves are we in our own structures representing what we want to represent? We need to assess what the community's expectations of us are and what do we expect of ourselves.

We would like to bring this topic back at the next meeting. If we have a forum it will not be an open forum for everyone because those forums are not productive. It is important to have community involvement but if it is not structured it won't go anywhere. Everyone should give some thought on a summit. We will talk about it more at the next meeting.

National Consortium

This year's National Consortium on Race and Ethnic Bias in the Courts is June 10-13, 2015. Justice Yu and Justice Johnson cannot attend, and it is at the same time as the ATJ Conference, so staff cannot attend either. This year it will be held in Buffalo, NY. We want to support the National Consortium and would like to know if anyone else is interested in attending on behalf of the Commission. Contact Cynthia if you are interested.

Civil Rights Resources

Judge Fleck will send an email to the Commission that includes links to the Bryan Stevenson extended interview by John Stewart, PBS documentary on Thurgood Marshall, a lecture series on Civil Rights, and also information about a Civil Rights pilgrimage. It was recommended that these links be put up on the Commission's website so that others can enjoy them too.

NEXT COMMISSION MEETING: April 10, 2015

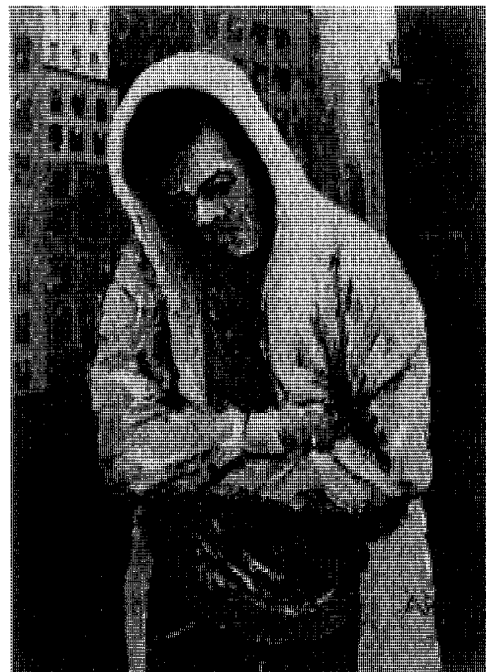
It was recommended that the Commission continue to reach out to and invite the community to our meetings and make a conscious effort to engage the community in our work.

The next meeting is scheduled for April 10, 2015, at Seattle University School of Law.

“URBAN DESPAIR” by Ashby Reed

COMMENTARY

In 2012 I was doing a series of pieces that portrayed inner-city landscapes that I remembered from my youth growing up in the south Bronx. When I first painted “Urban Despair” it was to interpret an idea I had about our youth across the country in those inner cities. The loud and colorful clothing was in contrast to the drab environment many African American youth are mired in today. The building behind the young man in the painting is my old tenement building I lived in and done as I remembered. The youth of the today wear their hoodies as a fashion statement but it sadly subjects them to profiling by the authorities. After painting the piece in December 2011, the Trayvon Martin tragedy unfolded on national TV in February, 2012. And since then the hoodie has become a protest symbol that makes an unprecedented statement about injustice and uneven law enforcement. I never exhibited that piece until about a year after painting it, but now it causes thoughtful conversation as we continue to watch current events play out month after month in the news.



ARTIST STATEMENT

I started out as a Fine Artist and when in school I learned that Commercial artists ate more regularly. So I switched my major and went into the advertising industry as an Art Director. Now that I am retired I decided to take up where I left off. As an impressionist styled painter, I work most comfortably with a pallet knife. I paint for enjoyment of filling a blank canvas with something I feel works in that moment, on that space. I collect images and files of things I like than I try to picture how I would reinterpret what I've seen and translate that onto a blank space with whatever medium I've chosen (pastel, acrylic or oil on canvas, board or paper).

My painting process initially involves pre-sketching my composition in pencil and then laying down colors to block in highlights and shadows. Then I work in details, refining as I build-out to completion. I try to stick to my inner-city upbringing, but I've been known to stray. Case in point, a scene I recorded photographically of a rocking chair on a sunny porch in Wisconsin was totally irresistible and very visually satisfying. I still consider it one of my best technically correct pieces to date.

Painting is my tool to interpret a visual opinion and it allows me to express a creative moment in time. I consider myself a student of the arts, not being a trained fine artist, so now I am truly enjoying my creative passion after 45 years in the commercial art world. I guess I've come full circle and back to what I always wanted to be, a Fine Artist.

THE SPOKESMAN-REVIEW

April 4, 2015

Guest opinion: House bill offers needed reforms of court-imposed debts

Judge Gregory Sypolt And Nancy Isserlis

Our criminal justice system should work to hold offenders accountable and offer them a meaningful opportunity to rebuild their lives. It should also provide restitution to crime victims. Unfortunately, Washington's systems for imposing financial debts on criminal defendants often undermine these goals.

Now, our Legislature has a chance to improve this key part of the justice system by passing legislation reforming Washington's policies on legal financial obligations (LFOs): the various fees, fines, court costs, assessments and restitution that courts order defendants to pay as part of their convictions.

LFOs are imposed in all courts, for all classes of offenses, and on every convicted defendant in Washington. These LFOs can include restitution to a victim, and fines. Persons convicted of crimes can also be required to pay for the cost of their public defenders, costs related to requesting a jury, and costs of jail. On average, Superior Court defendants are assessed \$2,540 per felony conviction.

The consequences of court-imposed debts can be devastating for poor defendants. Once imposed, LFOs accrue interest at 12 percent per year. And in some counties persons who lack the ability to pay off their LFOs are arrested and incarcerated – creating modern-day versions of debtors' prisons.

For people who are unemployed, undereducated and with limited means, LFOs can become a permanent burden. It can lead to wage garnishment, jail and job loss. They are prisoners of debt for the remainder of their lives.

Further, our LFO systems don't always serve the needs of victims. The law doesn't require that victims be paid first from district and municipal court collections. In Superior Courts, LFO payments can be applied to collection fees or other cases, even if victims are still owed restitution.

These problems with LFOs are receiving widespread and long-needed attention. The U.S. Department of Justice recently issued a scathing report about the system of monetary sanctions imposed by the city of Ferguson, Missouri, on residents. Ferguson, the department found, through its court policies for fining people, had created a pervasive system of oppression focused on the stopping, arresting, convicting and jailing of mostly poor African-American residents, then using fines from those cases to balance the city budget.

And in Washington, our Supreme Court recently issued an opinion (in *State v. Blazina*) that acknowledged excessive LFOs can contribute to recidivism by making it more difficult for people to find employment and housing. The court ordered trial judges to make an “individualized inquiry into the defendant’s current and future ability to pay before the court imposes LFOs.”

LFO reform is not a partisan issue. HB 1390, the reform bill, passed the Washington House of Representatives by an overwhelming 94-4 vote. In supporting the measure, House members concluded that the indigent should not be saddled with unpayable debts, and that payment of restitution should take priority. To that end, HB 1390 eliminates interest on LFOs (other than those for restitution) and provides that indigent defendants cannot have discretionary court costs imposed on them. And the bill provides that the homeless or mentally ill not be jailed when they fail to pay. Equally important, that measure prioritizes payment of restitution to victims. These provisions make sense – both in terms of being financially prudent, and toward creating an efficient, effective and more fair system of justice.

HB 1390 is now pending in the Senate, and it deserves to be passed. The Senate should ensure that HB 1390 remains a comprehensive solution to the myriad problems with Washington’s LFO systems. Policies that prevent people from getting a second chance need to be changed.

Washington can, and should, lead the way.

Judge Gregory Sypolt sits on the Spokane County Superior Court and is a trustee of the Superior Court Judges Association. Nancy Isserlis is the Spokane city attorney.

Get more news and information at Spokesman.com

Access to Justice Conference – Working for Justice, Our Journey Continues...

June 12-14, 2015

Wenatchee Convention Center, Wenatchee, WA

REGISTRATION INFORMATION

Registration Cost - \$250 before May 15th; \$275 after *scholarships are available.

- Register online at: <http://wa-atj.org/register/>, or see attached registration form
- MJC will cover: 1) Travel Expenses (mileage, airfare, parking) 2) Lodging 3) Per-Diem

AGENDA

Friday, June 12, 2015

10:00 am – 2:00 pm – Minority and Justice Commission Meeting (at Wenatchee Convention Center)

5:30 pm – 7:00 pm – Reception

Saturday, June 13, 2015

Full day of workshops

Topics include:

- Race equity
- Poverty and compounding effects of systemic barriers on marginalized populations
- Identifying and addressing institutional impediments to access to justice
- Leadership Development and movement building
- New partnerships to address increasingly complex legal needs
- New models for service delivery to address increasing legal needs
- MJC Sessions on: School-to-prison pipeline and race equity

Sunday, June 14, 2015

Plenary Session

PLEASE LET CYNTHIA KNOW BY APRIL 17 IF YOU ARE PLANNING TO ATTEND

WORKING FOR JUSTICE



OUR JOURNEY CONTINUES...

2015 Washington State Access to Justice Conference Friday June 12 - Sunday June 14, 2015 Wenatchee Convention Center • Wenatchee, WA

Registrant Name: _____

Organization: _____

Street Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Fax: _____

Registrant's Email: _____ PO # (if applicable) _____

Are you a presenter? Yes No

Would you like to be an Exhibitor (table display) in the Justice Joint? Yes No

Cost

Early bird by May 15th is \$250; full price after is \$275.

Days Attending: Friday Saturday Sunday

____ # of Attendees X \$ _____ = \$ _____

____ # of Meal Passes X \$110.00 = \$ _____ (non-attendees)

Includes Friday reception, Saturday continental breakfast & lunch, Sunday continental breakfast

Total enclosed: \$ _____

Please mail completed form with
check or P.O. postmarked by June 1, 2015
to the Event Firm:

Dunau Associates
2206 S Sherman St.
Spokane, WA 99203
Phone: (509) 535-7084

List each attendee you're registering below, including yourself if you plan to attend. Use the back if more space is needed.

First Name	Last Name	Email Address

Center on Communication, Difference, and Equity

Every day in America in 2014, we encounter difference. Our world is one in which people look, think, talk, listen, and live identities in countless ways. Consider, for example, that U.S. “minorities” constitute the majority of all new births in the nation; same-sex couples can now marry in 32 states; and more first-generation students today enter colleges than at any time in U.S. history. We are a nation of differences.

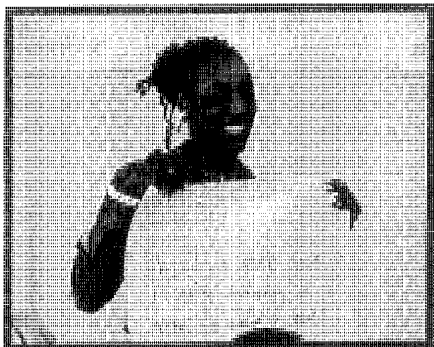
Every day we also encounter patterns of inequality. Justice is built into our national values, yet profound disparities abound: race-based inequality remains entrenched, LGBTQ youth are disproportionately bullied, women and men bring home different paychecks for the same work, working-class youth drop out of colleges at far greater numbers than middle-class peers, and on it goes. Differences and inequity are seemingly interwoven in the United States.

How we respond defines us. We believe that conventional wisdom is often wrong and that we—all of us, together—can build new knowledge, with real impact. Such eye-opening, for instance, might lead us to join Teach for America in one of the nation’s most diverse cities. Perhaps we’ll be compelled to work on racial reconciliation in the Mississippi Delta. Maybe we’ll learn about and embrace new models of family. We might volunteer for a neighborhood organization focused on improved health options. Empathy might become for us more than a word. Maybe, just maybe, we will be the change in the world we wish to see.

These examples are not hypothetical. Rather, students at the University of Washington—in just the past few months alone—made these exact choices after they participated in projects, courses, workshops, and partnerships focused on communication and difference, with the goal of understanding and embracing our diversity so that we might all rise together. We have developed these opportunities in recent years with great impact on our students, in the Seattle area, and in the broader region. Now we are determined to build something bigger, something with lasting strength, greater collective impact, and larger societal reach. We have decided to create a Center on Communication, Difference, and Equity.

Our ambitions are big, because the moment demands it. We seek to identify, create, and disseminate communication practices that embrace our differences—across races, genders, sexualities, incomes, abilities, and more—as individual and community strengths. Our foundational goal is to build a more equitable world, in which our words and imagery and attention are infused with understanding, respect, fairness, and justice. We know that new forms of communication, by themselves, will not solve the inequalities in our world, but they are surely an essential place to begin. We know the power of this work because we’ve been doing it in individualized ways, one project or experience at a time. Now it is time to bring together faculty, programs, community partners, and students to expand our impact.

We are committed to **research and innovation**, dedicated to **leadership development**, and foundationally **community-centered** in our desired impact.



We have three core pillars:

- 1. Conduct research and analysis on deeper cultural trends.** The University of Washington's idea culture, institutional and departmental values, and faculty make it the ideal place for thoughtful, equity-focused research from the undergraduate through the faculty levels. We do the following:
 - *Host Quarterly Speakers.* We host renowned speakers, including some of our own UW scholars, on important issues tied to communication, difference, and equity. For each speaker we hold a public workshop and convene a mentoring session with the visiting scholar for students and faculty.
 - *Convene Research Working Groups.* We are a collaboration of faculty and graduate students from across UW who focus on communication and difference and who discuss projects, prepare conference presentations, and collectively mentor and support new scholars and scholarship.
 - *Train Research Fellows.* We select scholarship fellows to pair with faculty members or graduate students on research projects on community challenges.
- 2. We are focused on leadership development.** We are committed to helping young people grow into leaders who understand, value, communicate and embrace difference, and who fight for equity. We do this via several initiatives:
 - *Host Workshops and a Leadership Institute.* A collection of workshops and a planned summer institute introduce students to best practices in communicating across and through difference, strategies in nonviolence and conflict resolution, and creative problem solving.
 - *Creation of a Student Leadership Group.* We provide physical and mentoring space to support a new, student-led, equity-focused organization that is committed to leadership development in communication and difference and to community partnerships.
 - *Immersion in Civil Rights Pilgrimages.* We lead weeklong pilgrimages to see sacred sites and meet footsoldiers who have worked for the rights and liberties of all. Students and community adults take these journeys together.
- 3. We are foundationally community-centered.** Universities—especially flagship public ones—should not be intellectual silos separate from the communities and regions in which they live. Towards ensuring integration with the larger community we do the following:
 - *Connect with Organizations.* We partner with local and national organizations, such as Boys and Girls Clubs and museums, who do the on-the-ground work of crossing, reconciling, and embracing difference to work toward equity.
 - *Convene Public Salons.* We host discussions and lead public dialogues on social issues of import. We aim to be the first place that community members think about as a resource when challenges of communication, difference and inequity arise.
 - *Collaborate with Local Museums.* We co-host programming and engage UW students in the work of community museums, around exhibits and events.

Funding: Our funding goal for the Center for the first five years is two-thirds community support, one-third UW support from the Department of Communication, College of Arts and Sciences, and other campus entities. This mix foundationalizes a community-partnered vision of the Center's work and facilitates timely development and significant creativity. Thereafter, several foundations are potential long-term funding outlets: Ford, MacArthur, Mellon, Open Society, and local ones.

Center for
Communication,
Difference
and Equity 

Donations (tax-deductible) can be made at bit.ly/uwcommgive or by contacting Victoria Sprang at vsprang@uw.edu or 206-724-3580.

BENDING THE ARC

DEVELOPING LEADERS WHO MAKE A WORLD OF DIFFERENCE

VISION

A half century ago, Dr. Martin Luther King Jr. declared, “The arc of the moral universe is long, but it bends toward justice.” We agree, and we know with certainty that the moral arc does not bend on its own. Rather, it bends when people—we the people—communicate and act in ways that uplift all of us.

The national creed of the United States does not say life, liberty, and justice *for some*. And yet, that is the reality. Today in America, women earn 78 cents for every dollar a man earns, black men are six times more likely to be incarcerated than white men, 46 million people live in poverty, 9 of every 10 LGBT students have or will experience harassment, 11 million immigrants are undocumented workers, and 22 states since 2010 have made it harder for seniors, minorities, the poor, people with disabilities, and young people to vote.

We need a new breed of leader to unravel these social injustices: persons who hail from all sectors of our increasingly diverse population *and* who have the capacity to drive us toward inspired solutions. They must have sensitivity to see inequities, knowledge to analyze how institutions and systems are structured, creativity to imagine in uncommon ways, and the courage to act with moral determination. We need people who can and do make a world of difference.

We build these leaders in two ways. First, we *immerse in foundational movements* on race, gender, and sexuality that provide blueprints for how we overcome opposition, transform systems, and change hearts and minds. We dive deep: we dissect strategies, we spend days with leaders and footsoldiers, we travel to crucial sites, and we direct our learning toward socially just outcomes today. Second, we *create diverse cohort communities* that are inter-generational, inter-racial, multi-gender, and cross-geographical. We listen and learn, we are challenged, we grow, and we live out a fundamental truth: that life, liberty, and justice *for all* becomes possible only if we architect this together.

MISSION

We develop diverse leaders who work, everyday, to bend the universe’s moral arc toward life, liberty, and justice for all.



Phase 1: Mentor

- Personal Maps
- Kingdom Social Change
- Movements

Phase 2: Pilgrimage

- Histories
- Up Close and Personal
- Beloved Community

Phase 3: Formation

- Leadership
- Decisions and Declarations
- Growth Plans

Phase 4: Action

- Community Grants
- Student Internships
- Bonding the Arc Fellows
- Community Partnerships
- Workshops + Seminars

BLACK LIVES MATTER: ELIMINATING RACIAL INEQUITY IN THE CRIMINAL JUSTICE SYSTEM



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For more information, contact:

The Sentencing Project
1705 DeSales Street NW
8th Floor
Washington, D.C. 20036

(202) 628-0871

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This report was written by Nazgol Ghandnoosh, Ph.D., Research Analyst at The Sentencing Project. The report draws on a 2014 publication of The Sentencing Project, *Incorporating Racial Equity into Criminal Justice Reform*.

Cover photo by Brendan Smialowski of Getty Images showing Congressional staff during a walkout at the Capitol in December 2014.

The Sentencing Project is a national non-profit organization engaged in research and advocacy on criminal justice issues. Our work is supported by many individual donors and contributions from the following:

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EXECUTIVE SUMMARY

“Black lives matter” has become a rallying cry in light of evidence that the criminal justice system is failing to uphold this basic truth. Official data, although woefully inadequate,¹ show that over half of those killed by police in recent years have been black or Latino.² Officers involved in these killings are rarely indicted, much less convicted, for excessive use of force.³ And official responses to recent protests have spurred further controversy: militarized police forces disrupted public assemblies in Ferguson,⁴ and New York City’s police union blamed pro-reform politicians and nonviolent protesters for the killing of two officers by a mentally unstable man.⁵

The criminal justice system’s high volume of contact with people of color is a major cause of African Americans’ disproportionate rate of fatal police encounters, as well as of broader perceptions of injustice in many communities. This briefing paper identifies four key features of the justice system that contribute to its disparate racial impact, and presents recent best practices for targeting these inequities drawn from adult and juvenile justice systems around the country. In many cases, these practices have produced demonstrable results.

Policing is by no means the only stage of the justice system that produces racial disparity. Disadvantage accumulating at each step of the process contributes to blacks and Latinos comprising 56% of the incarcerated population, yet only 30% of the U.S. population.⁶ The roots of this

disparity precede criminal justice contact: conditions of socioeconomic inequality contribute to higher rates of some violent and property crimes among people of color. But four features of the justice system exacerbate this underlying inequality, and jurisdictions around the country have addressed each one through recent reforms.

1. Disparate Racial Impact of Policing

Police policies such as “broken windows” and stop, question, and frisk have disproportionately impacted young men of color. Prosecutorial policies, such as plea bargain guidelines that disadvantage blacks and Latinos compound these disparities, as do sentencing laws that dictate harsher punishments for crimes for which people of color are disproportionately arrested.

One reform to address this source of disparity in policing is the significant retrenchment of “stop and frisk” in New York City after a court ruled that the policy violated the constitutional rights of blacks and Latinos. Recent legislation reducing the sentencing disparity between the use and distribution of crack versus powder cocaine in California, Missouri, and at the federal level are examples of efforts to tackle sentencing inequalities.

Racial disparities in traffic stops have diminished on a nationwide basis in recent years, but persist in many jurisdictions. Police officers are more likely to stop black and Hispanic drivers for investigative reasons. Once pulled over, people of color are more likely than whites to be searched, and blacks are more likely than whites to be arrested. In jurisdictions like Ferguson, these patterns hold even though police have a higher “contraband hit rate” when searching white versus black drivers. Prosecutors and judges also often treat blacks and Hispanics more harshly in their charging and sentencing decisions.

The Vera Institute of Justice’s work with prosecutors’ offices around the country is one initiative addressing bias in charging decisions by monitoring outcomes and increasing accountability. Similarly, judges in Dorchester, Massachusetts, have worked with police and prosecutors to develop guidelines to reduce racial disparities in charging enhancements for people arrested for drug crimes in a school zone.

These patterns in the criminal justice system are not unique to Ferguson, Missouri, and they are not unique to the United States. They are a product of a system that has been shaped by a long history of racial inequality and discrimination.

Most states inadequately fund their indigent defense programs. Pretrial release often requires money bond, which can be prohibitive to low-income individuals and increases the pressure on them to accept less favorable plea deals. Many parole and probation systems offer supervision with little support. Public drug treatment programs are also underfunded, thereby limiting treatment and sentencing alternatives for low-income individuals.

New Jersey’s recently overhauled bail laws, which will increase nonmonetary release options, is an effort to create a more even playing field for low-income individuals. In Illinois, the expansion of alternative community programs has helped to nearly halve reliance on secure detention for youth.

A criminal conviction creates a barrier to securing steady employment, and those with felony drug convictions are disqualified from public assistance and public housing in many areas. In addition, allocating public resources to punitive programs comes at the expense of investments in crime prevention and drug treatment programs. Because of their higher rates of incarceration and poverty, people of color are disproportionately affected by these policy choices.

A key development in this area is California’s reclassification of a number of low-level offenses from felonies to misdemeanors under Proposition 47 in 2014. This initiative is intended to reduce prison admissions and to spare many low-level offenders the collateral consequences of a felony conviction. The law also redirects a portion of state prison savings – estimated to be \$150-\$250 million annually – to crime prevention and drug treatment programs.

Recent high-profile killings by police officers demonstrate the need for better police practices and improved accountability. They also underscore the need for revising policies that place people of color under greater police scrutiny and that lead to their disadvantage throughout the criminal justice system. To address this crisis of confidence, especially among people of color, criminal justice practitioners and policymakers should seize this opportunity to adopt and expand upon existing best practices for promoting racial equity at all levels of the justice system.

This briefing paper is organized as follows: Section I examines racial disparities in policing in Ferguson, Missouri, and New York City. Section II compares these patterns with nationwide trends and relates them to disparate outcomes at later stages of the criminal justice process. Section III examines the causes of blacks’ and Latinos’ overrepresentation in the justice system,



New York City, December 13, 2014: People march in the National March Against Police Violence, which was organized by National Action Network, through the streets of Manhattan on December 13, 2014 in New York City. The march coincided with a march in Washington, D.C. and came on the heels of two grand jury decisions not to indict white police officers in the deaths of two unarmed black men. Photo by Andrew Burton, Getty Images.

including differential crime rates and the four sources of inequities in the justice system. Section IV presents best practices from around the country for reducing racial disparities created by these four sources. Section V explores strategies for implementation and evaluation. Section VI concludes by reviewing recent achievements and highlighting the need for further reforms.

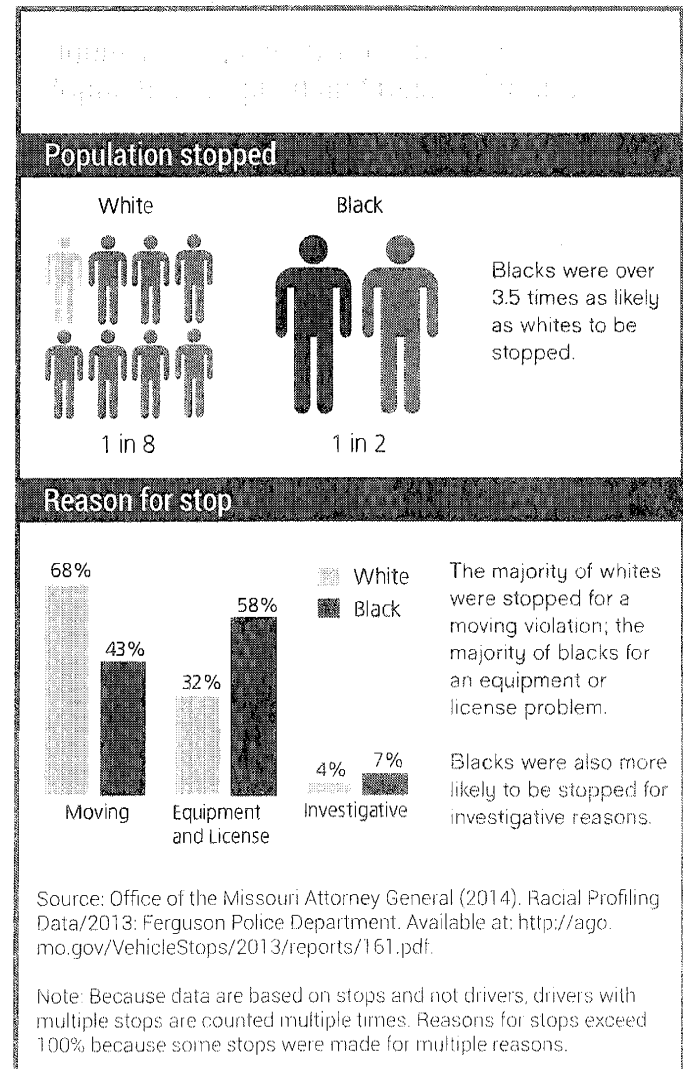
This report largely focuses on the experiences of African Americans / blacks, Latinos / Hispanics, and whites in the justice system. These are the populations for whom the most research and data are available. Nationwide data and research that include Asian Americans and American Indians are more limited: reports often aggregate these groups into one category, labeled "other." Existing research suggests that many of the trends described in this report hold for American Indians, for sub-groups of Asian Americans, and for other communities of color.

I. UNEVEN POLICING IN FERGUSON AND NEW YORK CITY

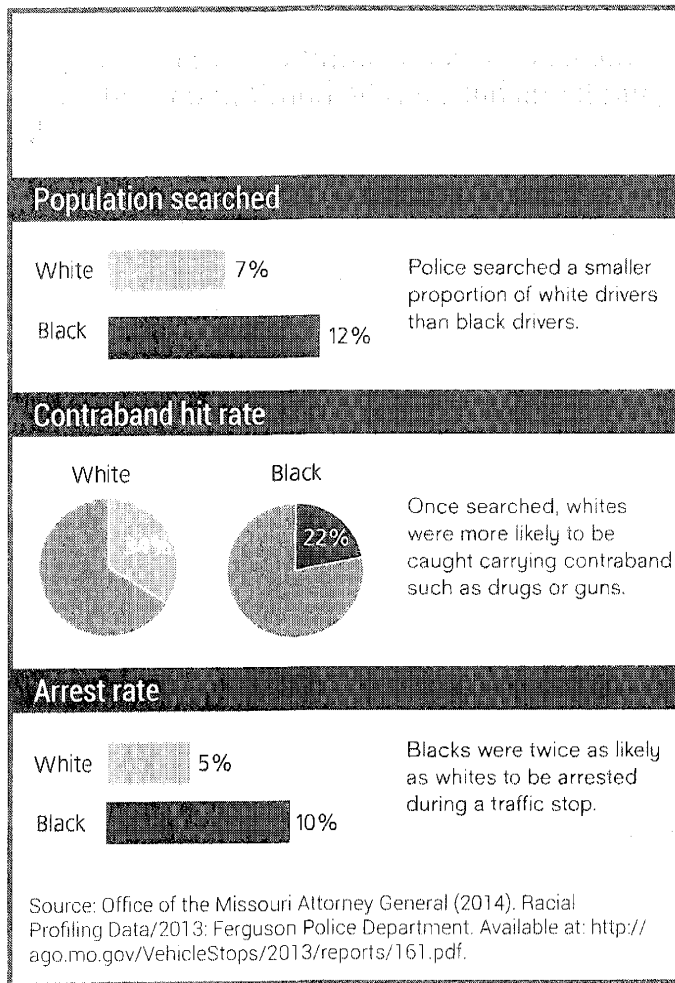
Officers' racially biased use of discretion – either intentional or unintentional – is one cause of racial disparities in police contact that are not explained by differences in crime rates. Another cause is formal police policies such as “stop and frisk” and “broken windows” policing. Designed to target minor violations with the rationale of circumventing serious crimes, these policies place people of color under greater scrutiny. Officer Darren Wilson stopped Michael Brown for jaywalking. Officer Daniel Pantaleo and his colleagues approached Eric Garner for selling untaxed cigarettes. Disproportionate police contact with people of color in these two very different jurisdictions set the context for these tragic deaths.

A suburb of St. Louis, Missouri, Ferguson had a population of just over 21,000 in 2013. Though African Americans comprised 63% of the city's driving-age population in that year, they accounted for 86% of drivers stopped by Ferguson police.⁸ That amounted to almost one stop for every two black adults in Ferguson, versus just over one stop for every eight white adults.

Ferguson police cited various reasons for stopping black and white drivers. The majority of white drivers (68%) were stopped for a moving violation while the majority of black drivers (57%) were stopped for a license or equipment problem (41% and 16%, respectively). Research has shown that although blacks are more



likely than whites to have vehicle code violations, this difference does not account for their disproportionate rates of stops for non-moving violations.⁹ Investigative stops – one of the most discretionary reasons for traffic stops – accounted for 7% of stops among black drivers in Ferguson, compared to 4% of stops among white drivers.



After making a stop, Ferguson police searched 12% of black drivers in contrast to 7% of white drivers. Despite – or as a result of – the high rate of stops and searches for black drivers, police had a lower “contraband hit rate” when searching black drivers compared to white drivers. They found contraband – primarily drugs and sometimes weapons – on 22% of black drivers who were searched and on 34% of white drivers who were searched.

Yet blacks were twice as likely as whites to be arrested during a traffic stop (10% versus 5%). Two factors account for this disparity. First, by searching such a high proportion of black drivers, officers found contraband on a similar share of black drivers as white drivers (but on a smaller proportion of black drivers that they searched). The more influential factor, though, was that black drivers were more likely to have arrest warrants

compared to their white counterparts. Black drivers were more likely to have these warrants in part because of unpaid fines related to their disproportionate exposure to traffic enforcement.

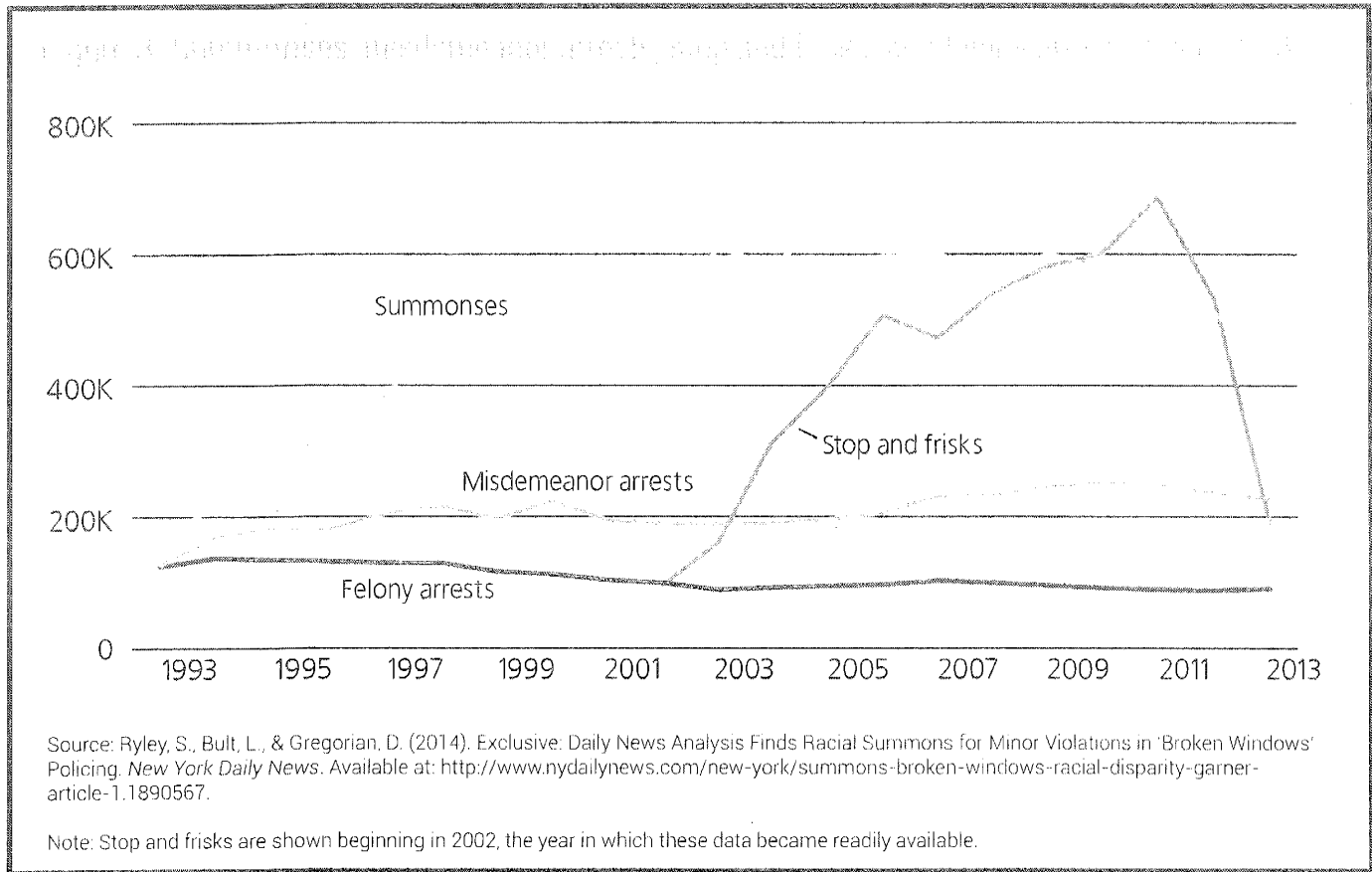
Municipalities such as Ferguson may have a fiscal incentive to focus law enforcement efforts on traffic violations and petty offenses. Court fines and fees have become a major source of revenue for certain municipal governments in St. Louis County – primarily those serving largely black populations with a high poverty rate.¹⁰ Court fines and forfeitures accounted for 20% of Ferguson’s operating revenue in 2013.¹¹ To ensure collection of these court fines and fees, these municipalities have issued a high rate of arrest warrants. Ferguson outpaced all other cities in the region with more than 1,500 warrants per 1,000 people in 2013 – about four times the rate for the city of St. Louis.¹²

In the aftermath of protests in late summer 2014, the city of Ferguson announced reforms to cap the amount of revenue generated from such tickets.¹³ But that promise was short-lived. In December 2014, Ferguson’s finance director announced plans to increase revenues from fines to fill a budget deficit from its most recent fiscal year.¹⁴

Policing in New York City took a dramatic turn in the 1990s under mayor Rudy Giuliani, with the launch of order-maintenance strategies known as “broken windows” and “quality of life” policing. These approaches seek to promote public safety by clamping down on petty offenses and neighborhood disorder.¹⁵ With Michael

Bloomberg as mayor (2002-2013) and Raymond Kelly as police commissioner, the police also embarked on a campaign to stop, question, and frisk primarily male residents of neighborhoods populated by low-income people of color – areas thought to have higher crime rates. Many of these “stop and frisk” encounters were initiated

with little legitimate rationale: officers noted “furtive movements” as the reason for 44% of stops between 2003 and 2013.¹⁶ While deemphasizing felony arrests,¹⁷ these policies dramatically increased the volume of arrests



for misdemeanor offenses, of summonses for violations of the administrative code (such as public consumption of alcohol, disorderly conduct, and bicycling on the sidewalk), and of investigative police encounters with innocent people.

Men of color have borne the brunt of these policies. Men have been over four times as likely as women to be arrested for a misdemeanor in New York City since 1980.¹⁸ Between 2001 and 2013, 51% of the city's population over age 16 was black or Hispanic. Yet during that period, 82% of those arrested for misdemeanors were black or Hispanic, as were 81% of those who received summonses.¹⁹ The racial composition of stop and frisks was similar.²⁰

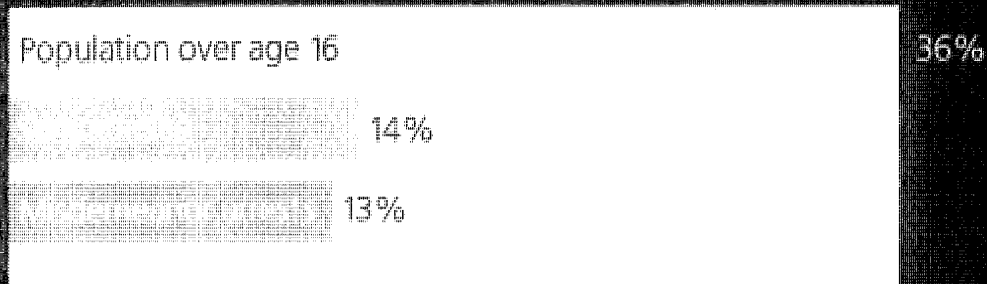
Commissioner William Bratton played a crucial role in implementing "broken windows" policies when he led the city's transit police in 1990 and during his first tenure as police commissioner under Mayor Rudy Giuliani, from 1994 to 1996. Now reappointed, Bratton and Mayor Bill de Blasio remain committed to this style of order-maintenance policing, with Bratton touting its efficacy and explaining that its racial disparities result from targeting communities and populations with higher violent crime rates.²¹ In response to the outcry following Garner's

death, Bratton has announced plans to retrain officers on appropriate use of force during these encounters.

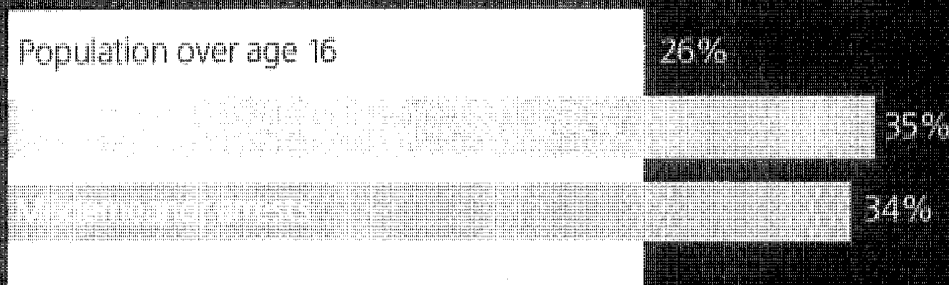
Yet research shows that order-maintenance strategies have had only a modest impact on serious crime rates. New York City experienced a dramatic crime drop during its period of rising misdemeanor arrests and summonses: the city's homicide rate declined by 73% between 1990 and 2000.²² But this was not unique; other large cities including Seattle and San Diego have achieved similar reductions in crime since their crack-era crime peaks.²³ Although an early study found that New York City precincts with higher levels of misdemeanor arrests experienced greater drops in serious crimes,²⁴ a flawed research design makes this conclusion unreliable²⁵ and few other studies have reached the same conclusion.²⁶ More recent studies have found that high misdemeanor arrest volume,²⁷ high summons volume,²⁸ and other factors,²⁹ have had only a modest association or no association at all³⁰ with the city's violent crime drop. "Stop and frisk" activity has also been shown to have no impact on precincts' robbery and burglary rates.³¹ Therefore, while order-maintenance policing demands a substantial share of public funds, there is limited evidence to support its efficacy and great cause for concern about its impact.³²

Figure 4. Racial composition of New York City population, summonses, and misdemeanor arrests, 2001-2013

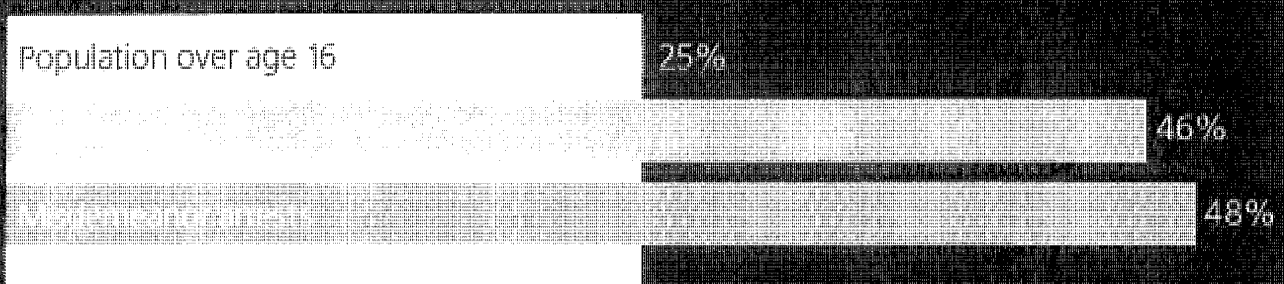
White



Latino



Black



Source: Data retrieved from Chauhan, P., Fera, A. G., Welsh, M. B., Balazari, E., & Mwachula, E. (2014). Trends in Misdemeanor Arrests in New York. New York, NY: John Jay College of Criminal Justice. Available at: http://www.jay.cuny.edu/web_images/10_28_14_TOCPINAL.pdf (pp. 25-7); Hyley, S., Sult, L., & Gregorian, D. (2014). Exclusive: Daily News Analysis Finds Racial Summonses for Minor Violations in 'Broken Windows' Policing. *New York Daily News*. Available at: <http://www.nydailynews.com/new-york/summons-broken-windows-racial-disparity-garner-article-1.1890557>.

Note: Summonses and misdemeanor arrest data are based on incidents rather than individuals; individuals with multiple arrests and summonses are counted multiple times. Summonses data did not include age breakdown and are drawn from approximately 30% of cases that provided race information.

II. A CASCADE OF RACIAL DISPARITIES THROUGHOUT THE CRIMINAL JUSTICE SYSTEM

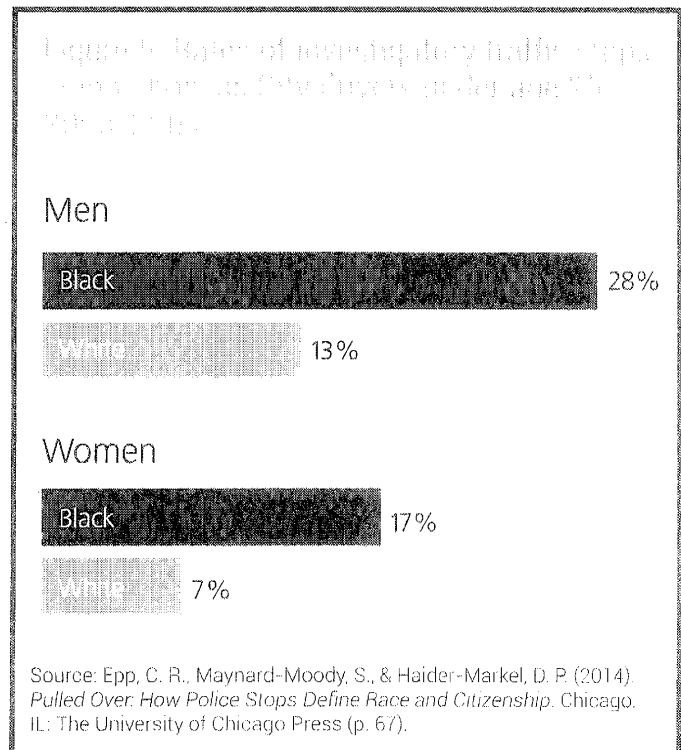
In recent years, nearly equal proportions of blacks, whites, and Latinos in the United States have reported being stopped by the police while on foot or in their cars.³³ But the causes and outcomes of these stops still differ by race, and staggering racial disparities in rates of police stops persist in certain jurisdictions.³⁴ These disparities snowball as individuals traverse the criminal justice system.

Blacks were 31% more likely and Hispanics were 6% more likely than whites to report a recent traffic stop in 2011, although in other recent years a similar proportion of blacks, Latinos, and whites have reported experiencing these stops.³⁵ Ferguson and New York are two of many jurisdictions where traffic and pedestrian stops still differ significantly by race. A recent investigation of the rates at which the Boston Police Department observed, stopped, interrogated, frisked, or searched individuals *without* making an arrest found that blacks comprised 63% of these police-civilian encounters between 2007 and 2010, although they made up 24% of the city's population.³⁶ Similar trends have led approximately 20 cities across the country to enter into consent decrees or memoranda of understanding with the Department of Justice to reduce excessive force and/or protect the public's civil rights, and several other cities are currently under investigation.³⁷

A closer look at the causes of traffic stops reveals that police are more likely to stop black and Hispanic drivers for discretionary reasons. A study of police stops between 2003 and 2004 in Kansas City distinguished between

“traffic-safety stops” (reactive stops used to enforce traffic laws or vehicle codes) and “investigatory stops” (proactive stops used to investigate drivers deemed suspicious).³⁸ The authors found that rates of traffic-safety stops did not differ by the driver's race, but rates of investigatory stops did, and did so significantly. While these differences persisted for all ages, they were sharpest among drivers under age 25: among these drivers, 28% of black men had experienced an investigatory traffic stop, as had 17% of black women, 13% of white men, and 7% of white women.

Class differences did not fully explain this racial disparity: black drivers under age 40 were over twice as likely as their



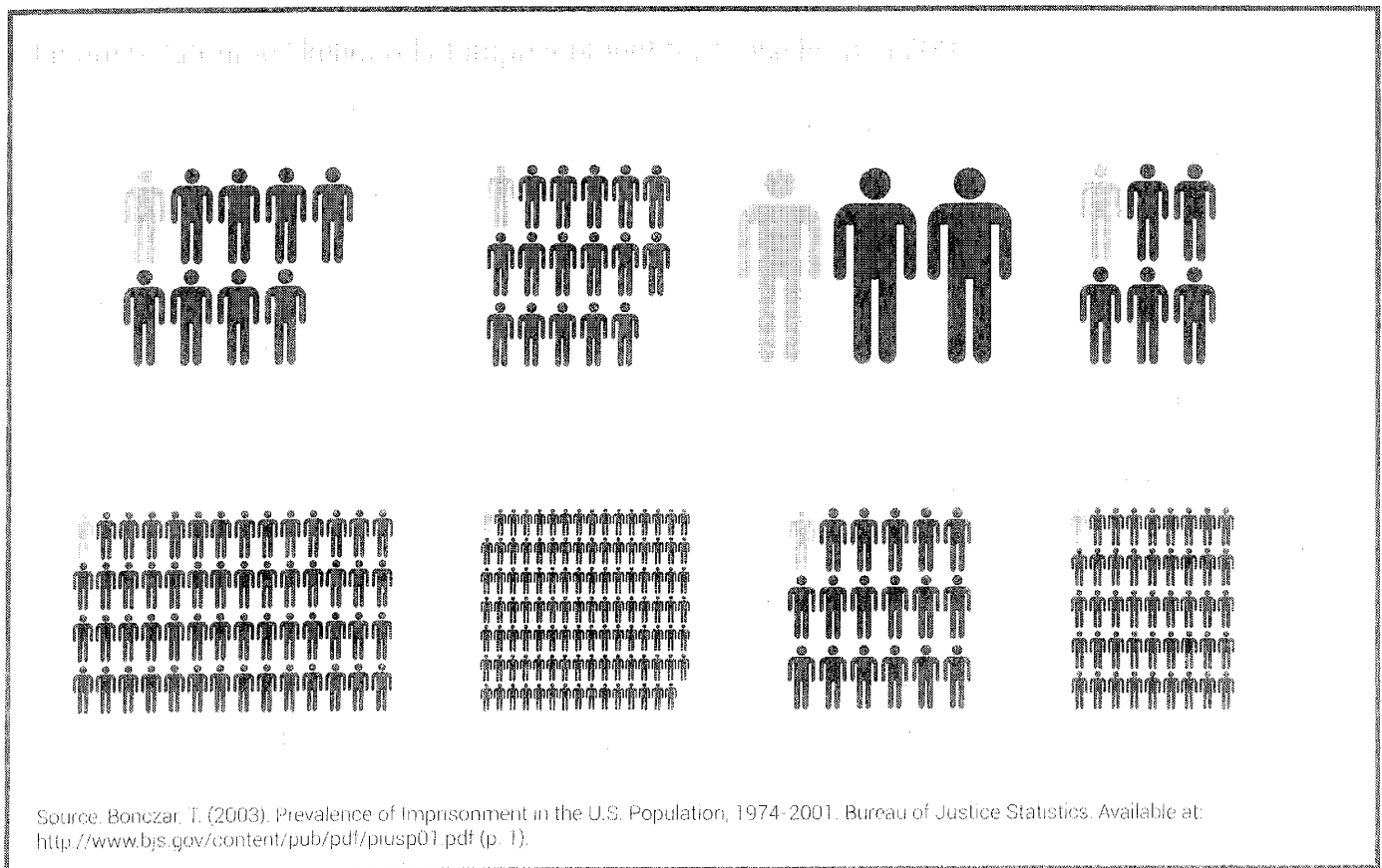
white counterparts to experience investigatory stops for both the highest- and lowest-valued cars. Traffic-safety stops, the researchers concluded, are based on “how people drive,” whereas investigatory stops are based on “how they look.”

Nationwide surveys also reveal disparities in the outcomes of police stops. Once pulled over, black and Hispanic drivers were three times as likely as whites to be searched (6% and 7% versus 2%) and blacks were twice as likely as whites to be arrested during a traffic stop.³⁹ These patterns hold even though police officers generally have a lower “contraband hit rate” when they search black versus white drivers.⁴⁰

A recent investigation of all arrests – not just those resulting from traffic stops – in over 3,500 police departments across the country found that 95% of departments arrested black people at a higher rate than other racial groups.⁴¹ The cumulative effect of these

policies is that 49% of African American men reported having been arrested by age 23, in contrast to 38% of their non-Hispanic white counterparts.⁴² The next section of this briefing paper will examine how much of this disparity stems from differential crime rates.

The nature of police encounters also differs substantially for people of color compared to whites. Several surveys conducted between 2002 and 2008 have shown that Hispanics were up to twice as likely and blacks were up to three times as likely as whites to experience physical force or its threat during their most recent contact with the police.⁴³ More broadly, when a 1999 Gallup survey asked Americans about perceptions of police brutality in their neighborhoods, 58% of people of color said police brutality took place in their area, in contrast to only 35% of whites.⁴⁴ Police officers’ greater use of discretion when stopping people of color suggests that differences in drivers’ behavior alone are unlikely to account for disparities in use of force.



People of color are therefore more likely than whites to be arrested – in part due to differences in crime rates but also due to differences in police policies and use of discretion. Once arrested, people of color are also likely to be charged more harshly than whites; once charged, they are more likely to be convicted; and once convicted, they are more likely to face stiff sentences – all after accounting for relevant legal differences such as crime severity and criminal history.⁴⁵ A recent comprehensive scholarly review conducted by the National Research Council concluded that:

Blacks are more likely than whites to be confined awaiting trial (which increases the probability that an incarcerative sentence will be imposed), to receive incarcerative rather than community sentences, and to receive longer sentences. Racial differences found at each stage are typically modest, but their cumulative effect is significant.⁴⁶

If recent trends continue, one of every three black teenage boys can expect to go to prison in his lifetime, as can one of every six Latino boys – compared to one of every seventeen white boys.⁴⁷ Smaller but still substantial racial and ethnic disparities also persist among women.

New York's and Ferguson's racial disparities in policing are therefore representative of many aspects of police-citizen encounters around the country. Moreover, policing is not the only stage of the justice system that produces unwarranted racial disparity. Disadvantage accumulates throughout the criminal justice process and contributes to the disproportionate presence of blacks and Latinos in prisons, jails, and under community supervision. The next section presents a closer examination of the causes of these racial disparities.

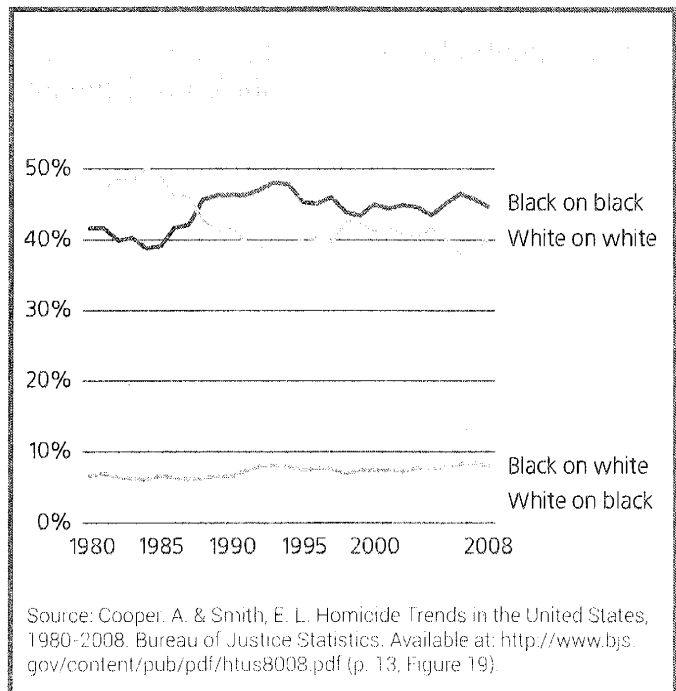
III. CAUSES OF DISPARITIES

The roots of this disparity precede criminal justice contact: conditions of socioeconomic inequality contribute to higher rates of certain violent and property crimes among people of color. But four features of the justice system exacerbate this underlying disparity: First, a variety of **ostensibly race-neutral criminal justice policies** in fact have a disparate racial impact. Second, **implicit racial bias** leads criminal justice practitioners to punish people of color more severely than whites. Third, **resource allocation decisions** disadvantage low-income defendants, who are disproportionately people of color. Finally, **criminal justice policies exacerbate socioeconomic inequalities** by imposing collateral consequences on those with criminal records and by diverting public spending away from preventative measures. This section first examines the role of differential crime rates before discussing inequities created by the criminal justice system.

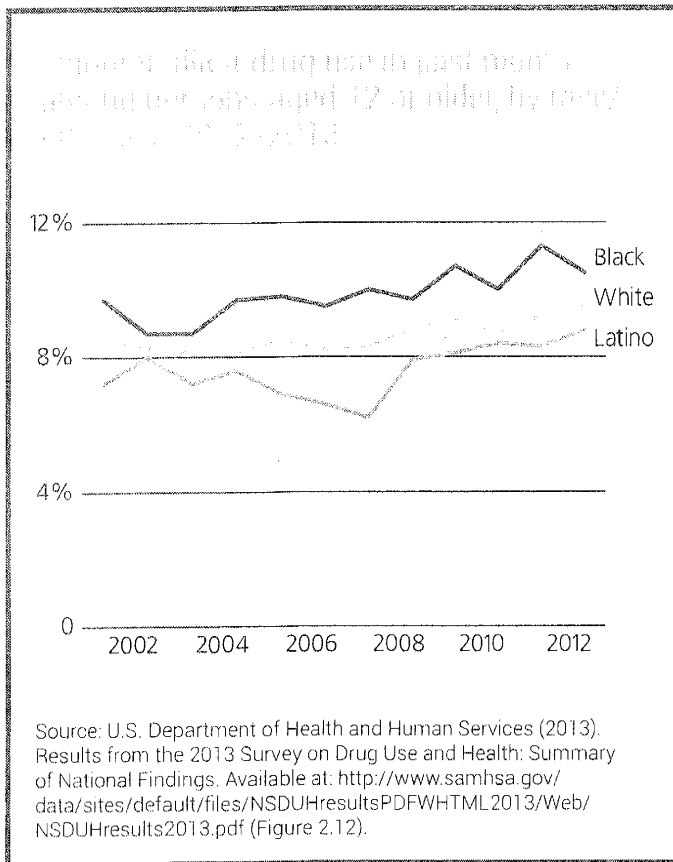
THE ECONOMIC CAUSE OF CRIMES

People of color are more likely than whites to experience **economic disadvantage** that is compounded by **racial inequality**. These forces erode economic and social buffers against crime and contribute to higher rates of certain violent and property crimes – but not drug offenses – among people of color.

- Blacks and Latinos constituted half of the jail population in 2013.⁴⁸ In 2002, 44% of people in jail **lacked a high school degree**. In the month prior to their arrest, 29% were **unemployed**, and 59% reported **earning less than \$1000/month**.⁴⁹



- Higher rates of geographically concentrated socioeconomic disadvantage contribute to higher rates of certain violent and property crimes among African Americans.⁵⁰ In 2012, African Americans represented 13% of the U.S. population. But African Americans comprised 39% of arrests for **violent crimes** (49% for murder and nonnegligent manslaughter) and 29% of arrests for **property crimes**. Information gathered from victimization surveys and self-reports of criminal offending suggest that, especially for certain violent crimes and to a lesser extent for property crimes, the race of those arrested resembles those of the people who have committed these crimes.⁵¹ Blacks and Hispanics are also more likely than whites to be **victims** of property and violent crimes.⁵² The overall homicide rate for blacks was 6.2 times higher than for whites in 2011.⁵³



- Drug offending** does not differ substantially by race. Surveys by federal agencies show that both recently and historically, whites, blacks, and Hispanics have used illicit drugs at roughly **similar rates**.⁵⁴ Many studies also suggest that drug users generally purchase drugs from people of the same race or ethnicity as them.⁵⁵ Socioeconomic inequality does lead people of color to disproportionately use and sell drugs outdoors, where they are more readily apprehended by police. But disparities in drug arrests are largely driven by the factors described later in this section.

How much of the racial disparity in the prison population stems from crime rates, and how much is produced by the criminal justice system? In recent decades, a number of leading scholars, including Alfred Blumstein and Michael Tonry, have sought to quantify these effects. Over various time periods, these studies concluded that between 61% and 80% of black overrepresentation in prison is explained by higher rates of arrest (as a proxy for involvement in crime).⁵⁶ The remainder might be caused by racial bias, as well as other factors like differing criminal histories.⁵⁷ Several important nuances, described next, help to interpret these results.

Estimates of the extent to which differential crime rates account for disparities in imprisonment rates vary significantly by offense type and geography. In comparing the demographics of the prison population with arrestees, these studies have shown that the least racial disparity exists for the most serious offenses and that the most exists for the least serious offenses (for which arrest rates are also poor proxies for criminal involvement). This is because criminal justice practitioners can exercise greater discretion with less serious crimes. Scholars have also noted that there is wide variation among states in the degree to which arrest disparities explain incarceration disparities.⁵⁸

The overall conclusion of these studies is that racial differences in criminal offending explain a substantial, but incomplete, portion of the racial differences in the prison population for non-drug crimes. If racial differences in crime rates do not fully account for the high proportion of African Americans in prisons, what else is driving this disparity?

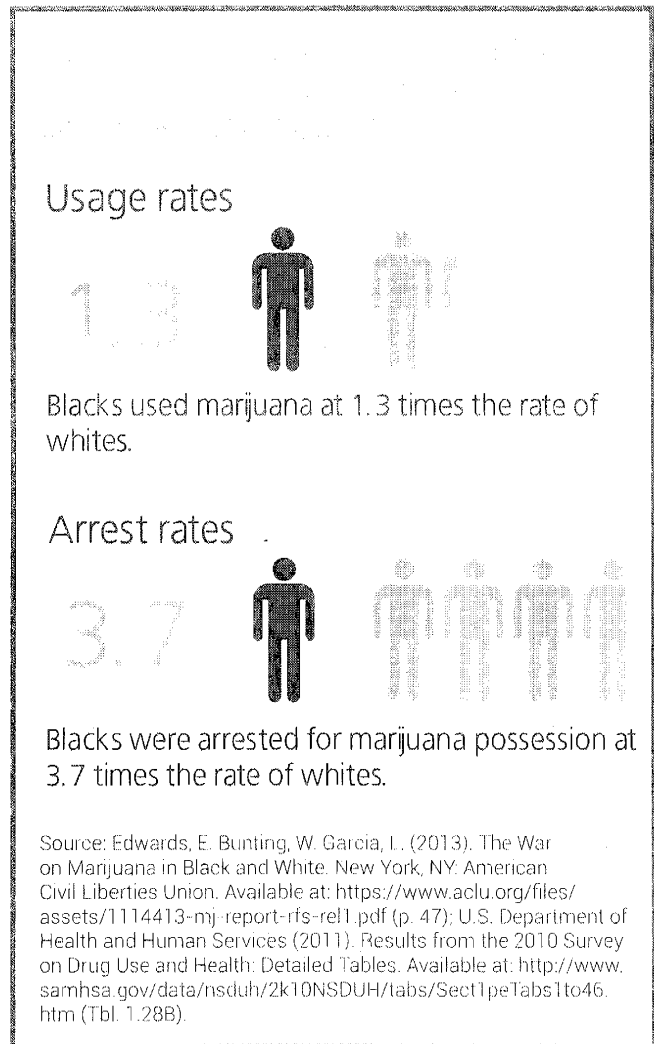
Myriad criminal justice policies that appear to be race-neutral collide with broader socioeconomic patterns to create a **disparate racial impact**. **Policing policies** and **sentencing laws** are two key sources of racial inequality.

Police policies that cast a wide net in neighborhoods and on populations associated with high crime rates disproportionately affect people of color, as described in Sections I and II. Consequently, people of color are more likely to be arrested even for behavior that they do not engage in at higher rates than whites. This greater level of scrutiny also contributes to higher rates of recidivism among people of color.

- Almost 1 in 3 people arrested for **drug law violations** is black, although drug use rates do not differ by race and ethnicity.⁵⁹ An ACLU report found that blacks were 3.7 times more likely to be arrested for marijuana possession than whites in 2010.⁶⁰ This disparity expands at later stages of the criminal justice system so that 57% of people in state prisons for drug offenses are people of color, even though whites comprise over two-thirds of drug users, and are likely a similar proportion of sellers.⁶¹

Sentencing laws that are designed to more harshly punish certain classes of offenses, or to carve out certain groups from harsh penalties, also often have a disparate impact on people of color. This occurs because of how sentencing laws interact with broader racial differences in our society and within the criminal justice system.

- **Drug-free school zone laws** mandate sentencing enhancements for people caught selling drugs near school zones. The expansive geographic range of



these zones coupled with high urban density has disproportionately affected residents of urban areas, and particularly those in high-poverty areas – who are largely people of color.⁶² A study in New Jersey found that 96% of persons subject to these enhancements in that state were African American or Latino. All 50 states and the District of Columbia have some form of drug-free school zone law.

- **Diversion programs** and **alternative courts** disproportionately bar people of color from alternatives to incarceration because they frequently disqualify people with past convictions.⁶³
- “**Three strikes and you’re out**” and other **habitual offender** laws disproportionately affect people of color who are more likely to have criminal records.

While most white Americans no longer endorse overt and traditional forms of **prejudice** associated with the era of Jim Crow racism – such as beliefs about the biological inferiority of blacks and support for segregation and discrimination – a nontrivial proportion continue to express negative cultural stereotypes of blacks.⁶⁴ Even more common among most white Americans, and many people of color, is **implicit racial bias**: unintentional and unconscious racial biases that affect decisions and behaviors. Psychological experiments have shown that these biases are pervasive in our society, and are held even by people who disavow overt prejudice.⁶⁵ Implicit racial biases also permeate the work of criminal justice professionals and influence the deliberation of jurors.⁶⁶

In **experimental research** such as video simulated shooter studies, subjects are asked to quickly identify and shoot armed suspects, or to press another button to not shoot unarmed suspects. Participants more quickly and accurately decided to shoot an armed target when that person was African American, but more quickly and accurately chose not to shoot if the unarmed target was white.⁶⁷ When researchers conducted this study with a predominantly white group of Denver-based **police officers**, they found that the officers were less likely than the general public to mistakenly shoot at black unarmed suspects.⁶⁸ However, officers more quickly shot at armed black suspects than at armed white suspects. The researchers concluded that while these officers exhibited bias in their speed to shoot, their experience and training reduced bias in their decision to shoot.⁶⁹

Studies of **criminal justice outcomes** also reveal that implicit biases influence the decisions of criminal justice professionals. Researchers have analyzed the extent to which implicit bias affects the work of **police officers, prosecutors, judges, and other members** of the courtroom work group.

- **Police:** As described in Sections I and II, many jurisdictions continue to experience significant racial disparities in police stops. Police have been

more likely to pull over people of color for what researchers call **investigatory stops**. Once pulled over, blacks and Hispanics were three times as likely as whites to be **searched**, and blacks were twice as likely as whites to be **arrested** during a traffic stop.

- **Prosecutors:** Prosecutors are more likely to charge people of color with crimes that carry heavier sentences than whites.⁷⁰ Federal prosecutors, for example, are twice as likely to charge African Americans with offenses that carry **mandatory minimum sentences** than otherwise-similar whites. State prosecutors are also more likely to charge black rather than similar white defendants under habitual offender laws.
- **Judges:** Judges are more likely to **sentence** people of color than whites to prison and jail and to give them **longer sentences**, even after accounting for differences in crime severity and criminal history.⁷¹ In federal cases, the sentencing disparities between **noncitizens** and **citizens** are even larger than those between people of color and whites.⁷² The race penalty, research from the 1990s revealed, is harshest for certain categories of people and offenses: it particularly affects men and the young, and is more pronounced for **less serious offenses**. In effect, young black men are perceived as being more dangerous because of their race and socioeconomic characteristics.
- **Other members of the courtroom work group:** Unconscious racial bias has been found in many other corners of the criminal justice system. A study in Washington state found that in narrative reports used for sentencing, **juvenile probation officers** attributed the problems of white youth to their social environments but those of black youth to their attitudes and personalities.⁷³ **Defense attorneys** may exhibit racial bias in how they triage their heavy caseloads.⁷⁴ Racially diverse **juries** deliberate longer and more thoroughly than all-white juries, and studies of capital trials have found that all-white juries are more likely than racially diverse juries to sentence individuals to death.⁷⁵ Studies of **mock jurors** have even shown that people exhibited skin-color bias in how they evaluated evidence: they were more likely to view

ambiguous evidence as indication of guilt for darker skinned suspects than for those who were lighter skinned.⁷⁶ Finally, an investigation of disparities in **school discipline** – including rates of out-of-school suspensions and police referrals – led the Departments of Education and Justice to declare that the substantial racial disparities in school discipline “are not explained by more frequent or more serious misbehavior by students of color,” but suggest racial discrimination.⁷⁷

Underfunding of Criminal Justice Programs

Key segments of the criminal justice system are **underfunded**, leading to worse outcomes for low-income defendants, who are disproportionately people of color. Moreover, many criminal justice policies and practices **disadvantage** people with **limited resources**.

- Over 60% of people in jail are being detained prior to trial.⁷⁸ **Pretrial detention** has been shown to increase the odds of conviction, and people who are detained awaiting trial are also more likely to accept less favorable plea deals, to be sentenced to prison, and to receive longer sentences. Seventy percent of pretrial releases require **money bond**, an especially high hurdle for low-income defendants, who are disproportionately people of color.⁷⁹ Blacks and Latinos are more likely than whites to be denied bail, to be set a higher money bond, and to be detained because they cannot pay their bond. They are often assessed to be higher safety and flight risks because they are more likely to experience socioeconomic disadvantage and to have criminal records. Implicit bias also contributes to people of color also faring worse than comparable whites in bail determinations.

- Most states inadequately fund their indigent defense programs. While there are many high-quality **public defender** offices, in far too many cases indigent individuals are represented by public defenders with excessively **high caseloads**, or by **assigned counsel** with **limited experience** in criminal defense.
- Certain policies disadvantage **lower income individuals**, who are disproportionately people of color. Examples include **risk assessments** that give preference to employed people, or **probation or parole requirements** to report at locations where there is little public transportation.
 - Due to limitations in **publicly funded treatment options**, there are fewer sentencing alternatives available to low-income defendants, who cannot afford to pay for treatment programs as an alternative to confinement.
- **Community supervision** and **reentry** programs are underfunded, with too many parole and probation systems offering supervision with little support.

Because the criminal justice system is an institution that primarily reacts to – rather than prevents – crime, it is ill-equipped to address many of the underlying causes of crime. But mass incarceration's hold on vast **public resources and the obstacles** erected for people with criminal records further erode the economic and social buffers that prevent crime.

- Reentry is obstructed by the **collateral consequences** of a criminal conviction. A criminal record creates overwhelming odds against securing steady employment.⁸⁰ Moreover, those with felony drug convictions are disqualified from receiving federal cash assistance, food stamps, and publicly subsidized housing in many areas.⁸¹ Combined with
- Excessive spending on criminal justice programs limits public funds that can be allocated to **crime prevention and drug treatment**. Because of their higher rates of incarceration, victimization, and poverty, people of color are disproportionately affected by these shortcomings in policy.

heightened surveillance, these obstacles contribute to three of four people released from prison arrested within 5 years, and half being re-imprisoned.⁸²

The best practices described in the following section are drawn from the following sources, unless otherwise stated: The Sentencing Project (2008). *Reducing Racial Disparity in the Criminal Justice System: A Manual for Practitioners and Policymakers*. Washington, D.C. Available at: http://www.sentencingproject.org/doc/publications/rd_reducingracialdisparity.pdf (pp. 11–57); Hoytt, E. H., Schiraldi, V., Smith, B. V., & Ziedenberg, J. (2001). *Reducing Racial Disparities in Juvenile Detention* (2001). Baltimore, MD: Annie E. Casey Foundation. Available at: <http://www.aecf.org/m/resourcedoc/aecf-Pathways8reducingracialdisparities-2001.pdf>; Shoenberg, D. (2012). *Innovation Brief: Reducing Racial and Ethnic Disparities in Pennsylvania*. Chicago, IL: MacArthur Foundation. Available at: <http://www.modelsforchange.net/publications/351>; National Association of Counties (2011). *Juvenile Detention Reform: A Guide for County Officials, Second Edition*. Available at: <http://www.aecf.org/m/resourcedoc/aecf-JuvDetentionReformForCountyOfficials-2011.pdf>; New York University Journal of Legislation and Public Policy (2013). 16(4). Available at: <http://www.nyu/jlpp.org/issues/volume-16-number-4/>

IV. BEST PRACTICES FOR REDUCING RACIAL DISPARITIES

REVISUE POLICIES AND DEALING WITH PROBLEMATIC RACIAL IMPACT

Through careful data collection and analysis of racial disparities at various points throughout the criminal justice system, police departments, prosecutor's offices, courts, and lawmakers have been able to identify and address sources of racial bias.

Revise policies with disparate racial impact:

- After criticism and lawsuits about racial disparities in its drug law enforcement, some precincts in and around Seattle have implemented a **pre-booking diversion strategy**: the **Law Enforcement Assisted Diversion program**.⁸⁵ The program gives police officers the option of transferring individuals arrested on drug and prostitution charges to social services rather than sending them deeper into the criminal justice system.
- Successful litigation and the election of a mayor with a reform agenda effectively curbed “**stop and frisk**” policing in New York City.⁸⁶ Mayor Bill de Blasio vowed that his administration would “not break the law to enforce the law” and significantly curbed a policy that was described by a federal judge as one of “indirect racial profiling.”⁸⁷ Thus far, the reform has not had an adverse impact on crime rates.⁸⁸ In a related effort to address disparities in enforcement, the New York City Police Department stated it would **no longer make arrests for possession of small amounts of marijuana** but would instead

treat these cases as non-criminal offenses subject to a fine rather than jail time.⁸⁹ Yet experts worry that this policy does not go far enough to remedy unfair policing practices and may still impose problematic consequences on those who are ticketed.⁹⁰

- Several school districts have enacted **new school disciplinary policies** to reduce racial disparities in out-of-school-suspensions and police referrals. Reforms at Florida’s Miami-Dade and Broward County Public Schools have cut school-based arrests by more than half in five years and significantly reduced suspensions.⁹¹ In Los Angeles, the school district has nearly eliminated police-issued truancy tickets in the past four years and has enacted new disciplinary policies to reduce reliance on its school police department.⁹² School officials will now deal directly with students who deface property, fight, or get caught with tobacco on school grounds. Several other school districts around the country have begun to implement similar reforms.

Revise laws with disparate racial impact:

- The Fair Sentencing Act (FSA) of 2010 reduced from 100:1 to 18:1 the weight disparity in the amount of **powder cocaine versus crack cocaine** that triggers federal mandatory minimum sentences. If passed, the Smarter Sentencing Act would apply these reforms retroactively to people sentenced under the old law. California recently eliminated the crack-cocaine sentencing disparity for certain offenses, and Missouri reduced its disparity. Thirteen states still impose different sentences for crack and cocaine offenses.⁹³

- Indiana amended its **drug-free school zone sentencing laws** after the state's Supreme Court began reducing harsh sentences imposed under the law and a university study revealed its negative impact and limited effectiveness. The reform's components included reducing drug-free zones from 1,000 feet to 500 feet, eliminating them around public housing complexes and youth program centers, and adding a requirement that minors must be reasonably expected to be present when the underlying drug offense occurs. Connecticut, Delaware, Kentucky, Massachusetts, New Jersey, and South Carolina have also amended their laws.⁹⁴
- Through persistent efforts, advocates in Illinois secured the repeal of a 20-year-old law that required the **automatic transfer** to adult court of 15- and 16-year-olds accused of certain drug offenses **within 1,000 feet of a school or public housing**. A broad coalition behind the reform emphasized that the law was unnecessary and racially biased, causing youth of color to comprise 99% of those automatically transferred.
- Following a campaign that emphasized disparate racial enforcement of the law, a ballot initiative in Washington, D.C. may **legalize possession of small amounts of marijuana** in the district.⁹⁵
- Officials in Clayton County, Georgia reduced **school-based juvenile court referrals** by creating a system of graduated sanctions to **standardize** consequences for youth who committed low-level misdemeanor offenses, who comprised the majority of school referrals. The reforms resulted in a 46% reduction in school-based referrals of African American youth.
- Iowa, Connecticut, and Oregon have passed legislation requiring a **racial impact analysis** before codifying a new crime or modifying the criminal penalty for an existing crime. Minnesota's sentencing commission electively conducts this analysis. This proactive approach of **anticipating disparate racial impact** could be extended to local laws and incorporated into police policies.

Addressing Disparate Impact

- The District Attorney of Brooklyn, New York informed the New York Police Department that he would **stop prosecuting minor marijuana arrests** so that "individuals, and especially young people of color, do not become unfairly burdened and stigmatized by involvement in the criminal justice system for engaging in non-violent conduct that poses no threat of harm to persons or property."⁹⁶
- Following a two-year study conducted in partnership with the Vera Institute of Justice, Manhattan's District Attorney's office learned that its **plea guidelines** emphasizing **prior arrests** created racial disparities in plea offers. The office will conduct implicit bias training for its assistant prosecutors, and is being urged to revise its policy of tying plea offers to arrest histories.⁹⁷
- Jurisdictions have been able to reduce racial disparities in confinement by documenting racial bias inherent in certain **risk assessment instruments (RAI)** used for criminal justice decision making. The development of a new RAI in Multnomah County, Oregon led to a greater than 50% reduction in the number of youth detained and a near complete elimination of racial disparity in the proportion of delinquency referrals resulting in detention. Officials examined each element of the RAI through the lens of race and **eliminated known sources of bias**, such as references to "gang affiliation" since youth of color were disproportionately characterized as gang affiliates often simply due to where they lived.
- Similarly, a review of the **RAI** used in consideration of pretrial release in Minnesota's Fourth Judicial District helped reduce sources of racial bias. Three of the nine indicators in the instrument were found to be **correlated with race**, but were **not significant predictors** of pretrial offending or failure to appear in court. As a result, these factors were removed from the instrument.

In its comprehensive review of implicit racial bias research, the Kirwan Institute for the Study of Race and Ethnicity concludes that “education efforts aimed at raising awareness about implicit bias can help debias individuals.”⁹⁸ Their review describes a number of debiasing strategies shown to reduce implicit racial bias in both experimental and non-experimental settings. These include providing exposure to counter-stereotypic imagery, increasing inter-racial contact and diversity, and monitoring outcomes to increase accountability. This section examines recent proposals to reduce bias in policing, as well as how jurisdictions have mitigated the negative impact of implicit bias in later stages of the justice system by establishing objective guidelines to standardize decision making, ensuring that decision-makers have access to the most complete information possible, and providing training on racial bias.

Addressing Bias and Improving the Quality of Police-Community Contact

In addition to **reducing excessive police contact**, police departments must also improve the nature of this contact to **curb excessive use of force**. Because of their training and experience, police officers are less likely than the general public to mistakenly shoot at black unarmed suspects in experimental settings, and exhibit less bias in their response times.⁹⁹ But it is unclear how these lab-based outcomes translate to real-world scenarios. Simulation studies have underscored the challenges in using officer training – especially exposure to counter-stereotypic imagery – to reduce racial bias in police officers’ response times.¹⁰⁰ Research on many recently proposed reforms to reduce racial bias in policing has been limited and mixed:

- Many police departments have struggled to **recruit and retain persons of color** in their ranks. Underrepresentation of people of color presents a barrier to building relationships with the communities they are sworn to serve.¹⁰¹ Survey data suggest that black officers may be more mindful than white officers of biased policing. A majority of black officers believe (and a majority of white

officers disagree) that police treat whites better than people of color, and agree that police are more likely to use force against people of color than against whites.¹⁰² Yet a diverse police force alone is unlikely to remedy community-police relations. Studies have reached **conflicting conclusions** about the relationship between the race of officers and their likelihood of having used force.¹⁰³

- Some jurisdictions in the United States and abroad offer improved models for preventing excessive use of force, investigating claims, and ensuring police accountability. Connecticut, Maryland, and Wisconsin have passed laws requiring **special prosecutors** to handle cases of police misconduct in order to address the potential conflict of interest when local district attorneys prosecute the law enforcement officials with whom they work daily.¹⁰⁴ France and Spain have similar laws, requiring independent investigating magistrates for cases involving police use of deadly force.¹⁰⁵ Given the considerable leeway given to police on when to use force within the “objectively reasonable” standard set forth by the Supreme Court,¹⁰⁶ it is important to create clear guidelines that **curb excessive use of force**. Germany, for example, provides strict limitations on the use of force for petty offenses.¹⁰⁷ A case study of the Austin Police Department recommends a use of force policy that contains clear deadly force and less-lethal force guidelines, extensive police training in all force options, and an early warning system for identifying problem officers.¹⁰⁸ Once officers are deemed unqualified by their commanders, a process should be established to **remove problem officers and prevent those with a history of misconduct from transferring to other departments**.¹⁰⁹ In addition, an independent **civilian review board** with the power to discipline officers should be established to oversee complaints filed by the public.

- There is currently growing interest in the potential for **body cameras** worn by officers to reduce their excessive use of force and increase accountability. Following the fatal police shooting in Ferguson, Missouri, President Obama has pledged to allocate \$75 million to the purchase of 50,000 body cameras.¹¹⁰ **Research** on the effectiveness of these cameras, however, is both **limited and mixed**.

There is some evidence that body cameras can reduce use of force by police, assaults on officers, and citizen complaints, by changing either police or citizen behavior.¹¹¹ Yet as the non-indictment of NYPD officer Daniel Pantaleo for Eric Garner's death suggests, video footage of excessive police force does not ensure accountability. Meanwhile, this technology has raised concerns that body cameras may intrude on citizen privacy and exacerbate trauma among victims of crimes and accidents. Yet a number of civil rights organizations, including the American Civil Liberties Union, have generally expressed support for the use of body cameras, provided that they are governed by strict privacy policies.¹¹² This year, Los Angeles will become the first major U.S. city to implement body camera technology widely.¹¹³

Eliminate racial disparities in charging decisions

- The Vera Institute of Justice's Prosecution and Racial Justice program has worked with various jurisdictions to reduce unwarranted racial and ethnic disparities caused by **prosecutorial decision making**. In Milwaukee, prosecutors previously filed drug paraphernalia charges against 73% of black suspects but only 59% of white suspects.¹¹⁴ The prosecutor's office was able to eliminate these disparities by **reviewing data** on outcomes, **stressing diversion** to treatment or **dismissal**, and requiring attorneys to consult with supervisors prior to filing such charges.

Establish objective criteria and guidelines for decision making.

- In Dorchester, 52% of people of color arrested in a school zone for a drug crime received an enhanced charge, while only 15% of whites received such a charge. Based on these findings, judicial leadership worked with police and prosecutors to develop **guidelines** to more fairly handle **school zone cases**.
- Similarly, Multnomah County instituted a "**sanctions grid**" for probation violations

that minimized **staff inconsistencies**, while encouraging youth sanctions other than secure detention. The changes resulted in an immediate reduction in the detention population and were part of a broader effort that largely eliminated the racial disparity in the proportion of referrals resulting in detention.

- When making bail determinations in Saint Louis County, Minnesota, judges did not **have access to a defendant's bail report**, which contained important personal background information, and relied exclusively on the name of the person arrested, the current charge, and the person's prior criminal history in the state. Local officials perceived the system to be biased against people of color, releasing whites on their own recognizance twice as often as other racial groups, and imposing money bond on African Americans more often and in a greater amount than on whites. Racial disparities remained even when controlling for offense severity level, number of felony charges, and the defendant's criminal history. Changes were made so that in all felony cases, judges only made bail determinations once a bail report had been provided. The judges also received training on best practices in making bail determinations.

Address potential for bias among jurors

- U.S. District Court Judge Mark W. Bennett spends 25 minutes **discussing implicit bias** with the potential jurors in his court.¹¹⁵ He shows video clips that demonstrate bias in hidden camera situations, gives specific instructions on avoiding bias, and asks jurors to sign a pledge. Although the impact of this approach has not been measured, mock jury studies have shown that *increasing* the salience of race and making jurors more conscious of their biases *reduces* biased decision making.¹¹⁶
- North Carolina's **Racial Justice Act** enabled commutation of death sentences based on statistical evidence that race had played a role in sentencing. Four death sentences were commuted to life without parole. But as a result of divisive state politics on the issue, the legislature subsequently repealed the law.

COPIES & EXTRA PLAYING TIME

Investing in alternatives to incarceration and limiting the financial outlays required from defendants have helped to reduce the disadvantage of low-income people of color in the criminal justice system.

INVESTING IN ALTERNATIVES TO INCARCERATION

- In 2014, New Jersey reformed its bail system to **emphasize risk assessment over monetary bail** in pretrial release decisions. Previously, all defendants were detained based on their ability to post bail, regardless of their risk level. The new set of laws, which includes a constitutional amendment approved by voters, expands judicial discretion to set the terms of pretrial release and provides judges with **broader nonmonetary pretrial release options**. Judges may now release lower-risk indigent individuals who cannot afford bail and may deny pretrial release for high-risk individuals.¹¹⁷ All defendants will undergo a risk assessment before their bail hearing and monetary bail may only be set if it is determined that no other conditions of release will assure their appearance in court. In addition, the legislation established time limits to ensure more speedy trials and guarantees defendants the right to counsel at their pretrial detention hearings.¹¹⁸
- Appointed counsel is under-resourced and often struggles to **gather information supporting pretrial release** to present at custody or bail hearings. The Cook County Public Defender's Office established the Detention Response Unit in 1996

to improve case outcomes for youth of color. The unit consisted of two paralegals who interviewed detained youth prior to their custody hearings. The paralegals helped add a larger social narrative to the court process by checking on community ties and stressing to families the importance of attending the custody hearing.

INVESTING IN ALTERNATIVES TO INCARCERATION FOR YOUTH OF COLOR

- In Berks County, PA, officials were able to reduce the number of youth in secure detention – most of whom were youth of color – by 67% between 2007 and 2012 in part by **increasing reliance on alternatives**. These included non-secure shelters for youth who cannot safely return home but did not require locked detention, evening reporting centers, electronic monitoring, and expanded use of evidence-based treatment programs. Because many of these youth had committed technical violations of their probation terms, this broader range of alternatives made it possible to keep them out of detention without harming public safety.
- In 2004, Illinois **expanded alternative community programs** and decreased reliance on detention. By 2007, detentions had been reduced by 44% across the state's four pilot sites. The sites created a wide variety of programs, including Aggression Replacement Training, Functional Family Therapy, a community restorative board, teen court, and substance abuse treatment. For every \$1 spent on the programs, \$3.55 in incarceration costs were avoided.
- Other jurisdictions have reduced the proportion of youth of color in detention by **adopting graduated sanctions** for probation violations. In Rock County, WI, graduated sanctions and incentives for probation violators, such as Aggression Replacement Training and evening reporting, helped drop the percentage of youth of color in the total detention population from 71%

to 30%. Similarly, in Union County, NC, the use of graduated sanctions for youth who violated probation helped to decrease the representation of youth of color in the total detention population by 32%.

Addressing Spanish Language Needs

Maricopa County, AZ, Santa Cruz County, CA

- Maricopa County significantly improved outcomes in the Driving Under the Influence (DUI) Court, by creating a separate **Spanish-speaking court**. The court achieved an 88% graduation rate, higher than the 66% rate for participants in English-speaking

DUI court. Graduates of the DUI court have to complete at least 20 weeks of treatment, education, and counseling, reach 6 months of sobriety, and be attending school or employed.

- Santa Cruz County's probation department addressed difficulties of communicating with Latino families by increasing the number of Spanish-speaking staff to match the proportion of such youth at the detention center. The department also doubled the number of youth diversions by **creating programs** to meet the needs of Latino youth, designing programs to meet regional needs across the county, and **expanding bilingual staff** at a local community provider. Overall, these efforts helped lead to a 25% reduction in the average daily detention population, and a simultaneous 22% reduction in the Latino representation in the juvenile hall population.

While the criminal justice system is not well-positioned to address the socioeconomic inequality that contributes to differential crime rates, it should not aggravate these conditions.¹¹⁹ Advocates have had success in downsizing and redirecting criminal justice spending, increasing utilization of existing resources, and limiting the collateral consequences of criminal convictions.

Legal and nonlegal alternatives to available community resources

- California voters in November 2014 approved Proposition 47, which reclassifies a number of low-level offenses from felonies to misdemeanors.¹²⁰ This allows 10,000 incarcerated individuals to petition to have their sentences reduced. Moreover, a significant portion of projected state prison savings each year will be allocated to preventing crime from happening in the first place. This includes **investments in mental health and substance abuse treatment**, programs to reduce **school truancy** and **prevent dropouts**, and support for **victim services**.
- Officials and community groups in Pima County, AZ, helped to increase the utilization of community resources by creating geocoded maps to identify communities with high proportions of youth referred to detention and then developing **community asset maps** to find available program services for at-risk youth in those areas.

Expanding the pool of available community resources

- A criminal record is a strong **barrier to employment**, and therefore to successful reentry. In 2012, the **Equal Employment Opportunity Commission** warned employers that they may be liable under Title VII of the Civil Rights Act

of 1964 if they uniformly administer “a criminal background check that disproportionately excludes people of a particular race, national origin, or other protected characteristic” when it is not related to the job or necessary for the business.¹²¹ To reduce barriers to employment for those with criminal records, many jurisdictions have passed laws or issued administrative orders to “**Ban the Box**” – or remove the question about conviction history from initial job applications and delay a background check until later in the hiring process.¹²² Twelve states – including Maryland, Illinois, and California – and 60 cities – including Atlanta and New York City – have passed these reforms. More broadly, 41 states and the District of Columbia have enacted some form of legislation to reduce collateral consequences.¹²³

- Advocates have been urging states to end denial of **federal cash assistance and food stamp benefits** for people convicted in state or federal courts of felony drug offenses. These bans primarily affect low-income women of color.¹²⁴ The 1996 Personal Responsibility and Work Opportunity Reconciliation Act that created the ban also permitted states to **opt out or modify** its terms. To date, 13 states have fully opted out of the cash assistance ban and nine from the food stamp ban. Others have opted out in part through smaller changes, such as making access dependent on type of drug offense or enrollment in treatment.
- In recent years, advocates have worked to address **housing insecurity** for persons with convictions. In 2011, the federal **Department of Housing and Urban Development** began urging public housing agencies to relax admission policies in an effort to help people released from prison reunite with their families.¹²⁵ Litigation underway in Kansas City and New York City strives to address exclusionary housing policies in the **private rental market**.¹²⁶
- Since 1997, 23 states, including New Mexico, Rhode Island, and Virginia, have enacted reforms to expand **voter eligibility** for people with felony convictions.¹²⁷ Felony disenfranchisement policies have had a disproportionate impact on communities of color, with black adults four times more likely to lose their voting rights than the rest of the adult population.¹²⁸

V. IMPLEMENTATION STRATEGIES AND METRICS FOR SUCCESS

All key decision-makers and interested parties – policymakers, practitioners, community groups, and formerly incarcerated individuals – should be included in the development and implementation of reforms. This collective approach can identify sources of disparity, develop solutions and weigh their costs, carry out implementation, and establish monitoring and accountability practices. Institutionalizing reforms in this way can also ensure that they are sustainably funded and implemented. In addition, public education can expand demand and support for reforms.

Analyzing the impact of reforms to address racial disparity within the justice system requires not only access to comprehensive data, but also a framework for measuring success. A key question is whether an initiative should be designed to reduce the *total number* of people of color in the justice system (in absolute count or as a rate) or the *relative ratio of racial disparity* (a comparison of rates of contact with the justice system). These are

both laudable goals, but with potentially very different outcomes. Just as it is possible to reduce the absolute level of imprisonment without reducing racial disparity (for example, if both white and black incarceration rates were equally reduced), so is it possible to reduce racial disparities without affecting incarceration levels (for example, if the white incarceration rate rose while the black incarceration rate remained constant).

A recent study of the juvenile justice system illustrates these dynamics. The National Council on Crime and Delinquency analyzed data from five geographically diverse counties engaged in juvenile justice reform in the period 2002–2012, a period when the number of juveniles in residential placement nationally declined by about 40%. The study found that of the juveniles placed in secure confinement during this period, the proportion who were youth of color increased from 12.4% in 2002 to 22.3% in 2012. While it is troubling that the racial disparity has increased, there are nonetheless far fewer African Americans (and whites) behind bars. From the perspective of reducing the consequences of criminal justice control over people of color, such a development has been constructive overall.

VI. CONCLUSION

The country has made progress on these issues in recent years. New York and other large states have significantly reduced their prison populations¹³¹ and the juvenile justice system has reduced youth confinement and detention by over 40% since 2001.¹³² The racial gap in incarceration rates has begun to narrow¹³³ and police departments in many cities are increasingly diverse.¹³⁴ The Garner case has sensitized many white Americans to problems in the justice system, with 47% of whites nationwide and half in New York City stating that the officer should have been indicted.¹³⁵ Finally, proper enforcement of the recently reauthorized Death in Custody Reporting Act can ensure accurate data on future police use of lethal force.¹³⁶

But demonstrators have echoed Garner's final words – “I can't breathe” – and the message attributed to Brown – “hands up, don't shoot” – in public protests because there is much left to do.

As proven by the jurisdictions highlighted in this report, reforms can improve criminal justice outcomes by targeting the four key causes of racial disparity: disparate racial impact of laws and policies, racial bias in the discretion of criminal justice professionals, resource allocation decisions that disadvantage low-income people, and policies that exacerbate socioeconomic inequalities. We must now expand the scale and increase the speed of these efforts.

ENDNOTES

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